POLICE DEPARTMENT CITY OF NEW YORK

January 11, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Catherine Thomas
Tax Registry No. 946318
46 Precinct
Disciplinary Case No. 2013-9978

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**Charges and Specifications:**

1. Said Police Officer Catherine Thomas, while assigned to the 46th Precinct, on or about March 7, 2013, while on duty, wrongfully made false or misleading statements on a Criminal Court Summons regarding the circumstances of an incident that occurred at or about 1200 hours near 1665 Andrews Avenue, Bronx County.

   P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL GENERAL REGULATIONS

2. Said Police Officer Catherine Thomas, while assigned to the 46th Precinct, on or about March 7, 2013, at about 1200 hours, while on duty, near 1665 Andrews Avenue, Bronx County, wrongfully arrested an individual known to the Department when no offense or crime by said individual had occurred.

   P.G. 208-01, Page 1, Paragraph 3 – LAW OF ARREST

3. Said Police Officer Catherine Thomas, while assigned to the 46th Precinct, on or about March 7, 2013, at about 1200 hours, while on duty, near 1665 Andrews Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer wrongfully conducted a search of a private vehicle.

   P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS

4. Said Police Officer Catherine Thomas, while assigned to the 46th Precinct, on or about May 22, 2013, while on duty and the subject of an official Department interview conducted by members of the Internal Affairs Bureau, wrongfully impeded a Department investigation by making misleading or otherwise inaccurate statements regarding the [sic] her arrest of an individual on March 7, 2013.

   P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS

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**Appearances:**
For Department Advocate's Office: Samuel Yee, Esq.
For Respondent: Stuart London, Esq.

**Hearing Dates:**
September 28 and October 7, 2015

**Decision:**
Specifications 1, 3 and 4 - Guilty
Specification 2 - Not Guilty

**Trial Commissioner:**
Rosemarie Maldonado

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 28 and October 7, 2015. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Elizabeth Spring as a witness and presented the out-of-court statements of complainant Person A as hearsay evidence. Respondent called Police Officer Charles Awani as a witness and testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of Specification 2 and Guilty of Specifications 1, 3 and 4.

## FINDINGS AND ANALYSIS

Respondent stands charged with: (i) wrongfully making false or misleading statements on a Criminal Court summons regarding the circumstances of an incident occurring at approximately 1200 hours on March 7, 2013; (ii) wrongfully arresting an individual known to the Department where no offense or crime had occurred; (iii) wrongfully conducting a search of a private vehicle; and (iv) wrongfully impeding a Department investigation by making misleading or inaccurate statements regarding the arrest.

The following is a summary of undisputed facts. On March 7, 2013, Respondent was assigned to the 46 Precinct conditions team. She was working a day tour, in uniform, and serving as the recorder in an unmarked van. Her partner was Police Officer Charles Awani. (Tr. 70-71)

At approximately 1140 hours, Respondent and Awani observed the driver of a BMW using his cell phone. Awani pulled directly behind the BMW and turned on his siren and lights. The vehicle stopped in front of 1665 Andrews Avenue, in the Bronx. The police van pulled up directly behind the BMW. The manner in which the police van was parked blocked traffic and a number of vehicles were stopped behind them. Awani approached the driver while Respondent approached the passenger. After asking the driver for his license and registration he determined that the driver was driving with a suspended license. Awani handcuffed the driver, arrested him and escorted him back to the police van. the driver confirmed that his license had been suspended and was cooperative throughout the interaction. (Tr. 72, 116-18, 120-21)

As the driver was arrested, Respondent remained by the curbside window. She exchanged words with passenger Person A. After a few minutes, she opened the car door and pulled him

out. A protested and she told him, "you smell like marijuana." Respondent then frisked Pers. A and handcuffed him. She also broadcast a 10-85 officer needs assistance call and requested one back-up unit. The team supervisor, Sergeant Bryant, responded. A was escorted to the police van and taken to the precinct. (Tr. 78-81, 84, 124; Department's Exhibit ("Dep't Ex.") 2 at 7-9)

The vehicle was searched both at the scene, with Sergeant Bryant present, and at the precinct. No contraband or weapons were found. Respondent returned to the precinct in a different police vehicle. Once there, she served Person A with a disorderly conduct summons. (Tr. 26, 45-46, 83-84, 86, 91) The summons states, in relevant part:

> Factual Allegations (describe offense):
> At TPO defendant with intent to cause disruption, acted in a violent, threatening manner toward PO on a public sidewalk while trying to conduct an investigation. The defendant's actions in turn formed a crowd to form/gather.
>
> Defendant stated in my presence (in substance):
> You have no probable cause to arrest me. (Dep't Ex. 4)

While at the precinct, Person A made an allegation that Respondent had taken money from him. IAB was notified and Person A was interviewed prior to his release. On March 18, 2013, IAB interviewed Person A a second time. No evidence was presented at trial that Person A's allegation of theft was substantiated. (Tr. 84-85, 126-27; Dep't Ex. 7)

The disorderly conduct summons was adjudicated in Criminal Court. Respondent and Person A both testified at a bench trial before a criminal court judge who found Person A guilty of disorderly conduct. (Tr. 63-64, 102-03)

**Specification 2: Wrongful Arrest**

Respondent is charged with wrongfully arresting Person A "when no offense or crime... had occurred." For the reasons set forth below, I find that the preponderance of the credible evidence presented at trial was insufficient to support the conclusion that this was a wrongful arrest.

Person A did not appear at the hearing. Instead, DAO presented the transcript and recordings of his March 7 and March 18, 2013, IAB interviews. (Dep't Exs. 1, 2, 7) According to Solis's hearsay statement, as Officer Awani spoke to the driver, he remained seated in the car using his cell phone. Unprovoked, Respondent approached and said, "[L]isten I'm telling you right now from the beginning, don't give me no fucking shit." He responded, "Why, why would you assume something like that from anybody?" and "Why would I do that. I don't even know you." Out of "pure malice," Respondent pulled him out of the car and repeated the admonishment, " don't give me no fucking shit." Respondent searched him and Person A reminded her that he had not consented. Respondent warned, "it doesn't matter what the hell you say, it's going to happen anyway." Person A continued to inquire why he was being handcuffed when he had "not done anything wrong." He also asked what gave her probable cause. Respondent answered, "you smell like marijuana." [1] During his IAB interview, Person A insisted that he was cooperative throughout the entire encounter. (Dep't Ex. 1 pp. 3, 5-7; Dep't. Ex. 2 pp. 7-9, 12)

At trial, Respondent presented a very different version of events. She told this tribunal that upon approaching the passenger side of the vehicle she observed Person A reach behind the seat. This reaching movement " scared" her. She asked Person A to "do me a favor, for your safety and mine, just put your hands where I can see them." According to Respondent, Person A then balled his fists "as if he was going to punch me through the window" and retorted, "I'm fucking telling you right now, don't tell me what to do." Person A ignored her continued directives to remain still and keep his hands visible. Respondent called for back-up. (Tr. 75-78, 80-81)

Respondent observed Person A reach for the glove compartment. She believed that, " ... either he is going to reach for [a weapon] or he is messing with me." Respondent opened the car door,

[1] Although the transcript of Person A's IAB interview attributes this response to " Male Voice 1," it is clear from the audio recording that Person A made this statement. (Dep't Exs. 2, 7)

pulled him out of the vehicle and conducted a pat-down. According to Respondent, Person A continued to curse at her, saying "you have no fucking probable cause, what the fuck are you pulling me out of the car for." Respondent explained Person A was "very upset" and added that "it was just a lot of cursing . . . he was just like mouthing off the whole time . . . ." (Tr. 78-79, 84)

Officer Awani also testified at the hearing. His account corroborated, in part, Respondent's description of Person A's loud and aggressive statements. Awani told this tribunal that while he spoke to the driver, he heard yelling and cursing from the passenger side. Specifically, as Person A was sitting in the vehicle, Awani heard him say, "fuck this" and "you're not fucking touching me. You're not going to fucking cuff me. I have rights." As Awani walked the driver and placed him in the police van, he continued to hear Person A say, "you're not fucking touching me." According to Awani, Person A was "agitated," and "very upset" and continued to curse. (Tr. 120-122, 124-25)

The account provided by Respondent at trial was mostly consistent with her May 22, 2013 Department interview. At that interview, Respondent recounted that when she asked Person A to keep his hands where she could see them, he balled his fists and said, "I'm telling you right fucking now, you're not placing me in your fucking cuffs." (Dep't Ex. 3 at 16-17, 19) When Respondent informed him that she would have to cuff him for safety if he kept moving around, Person A again retorted, "I don't give a fuck, you're not going to place me in cuffs." Because Person A continued moving around, Respondent removed him from the vehicle and asserted that "from the moment he came out of the car he had his fists up like he wanted to hit me." (Dep't. Ex. 3 at 24) At the conclusion of the interview, Respondent stated that in addition to the loud cursing, the

"threatening" behavior referenced in the summons she prepared was Person A balling his fists and moving inside the vehicle after she directed him to remain still. (Dep't' Ex. 3 at 35-36)

The pivotal issue concerning the wrongful arrest charge is whether the Respondent had a good faith basis to believe that she had probable cause to arrest Person A for disorderly conduct. Improper police action is punishable only if an officer acted "with knowledge that s/he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper." *Police Department v. Wang*, OATH Index No. 657/98 (Jan. 12, 1998), *Police Department v. Dowd*, OATH Index No. 1189/90 (Oct. 5, 1990), *aff'd in part and rev'd in part on other grounds*, Comm'r Decision (Nov. 20, 1990). To this end, we must assess whether Respondent was acting "in the reasonable exercise of [her] official powers." *Police Department v. Fiore*, OATH Index No. 690/90 (Mar. 26, 1990).

New York State's Penal Law is instructive on this point. Section 240.20 (1) provides that "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof...he engages in fighting or in violent, tumultuous, or threatening behavior." *See also N.Y. v. Weaver*, 16 N.Y.3d 123, 128 (2011) ("[A] defendant may be guilty of disorderly conduct regardless of whether the action results in public inconvenience, annoyance or alarm if the conduct recklessly creates a risk of such public disruption.") It is important to note that a crowd need not actually form for a disorderly conduct arrest to be valid. *Id.* (there is no *per se* requirement that members of the public must be involved or react to the incident for a finding of disorderly conduct.) At the heart of the disorderly conduct statute is the notion that the public should not be adversely affected, or be put at risk of being adversely affected, by a defendant's conduct.

The conduct that Respondent alleges Person A engaged in -- balling his fists aggressively, loudly cursing and screaming at a police officer on a residential street during the mid-morning hours -- could certainly create a risk of public annoyance or inconvenience, even if done through the open window of a parked vehicle. There is a valid line of reasoning to Respondent's corroborated rationale. Making "unreasonable noise" or using "abusive or obscene language" in a public place are actions specifically proscribed by Penal Law Sections 240.20 (2) and (3). A permissible inference could be drawn from her testimony that Person A's conduct reached the tipping point between isolated criticism of police action and a potential public problem.

DAO sought to prove that Person A did not conduct himself as Respondent described. The main evidence in support of its case are Person A's two out-of-court statements and four surveillance recordings from neighboring buildings. (Dep't Exs. 1-2, 5)

It is well established, however, that although hearsay is admissible in an administrative tribunal, it must be sufficiently probative and reliable to be accorded probative weight. *Ayala v. Ward*, 170 A.D.2d 235 (1st Dep't 1991), *lv. to app. den.*, 78 N.Y.2d 851, (1991). The nature and reliability of Solis's out-of-court statements warrant careful scrutiny because they are both controverted and outcome-dispositive. *See In re Matter of 125 Bar Corp. v. State Liquor Auth. of the State of N.Y.*, 24 N.Y.2d 174 (1969). Several factors weigh against the reliability of the hearsay statements entered into evidence.

First, without the benefit of sworn testimony, cross-examination and an assessment of Person A's demeanor, I could not rely on his description of events. Of particular concern were Person A's evasive answers to basic questions asked during an IAB interview. For example, he told IAB that he did not know the last name of the BMW's driver, who was his friend, and that he did not know the name of the company where he worked even though it was owned by his cousin.

These vague responses were troubling indicia of unreliability. Second, Person A's out-of-court account of the events leading up to the summons seemed self-serving. It is important to note that there was no reason for Respondent to escalate what would have otherwise been a cooperative police encounter with the driver and a peaceable arrest. Within this context, Person A's portrayal of himself as totally cooperative and compliant lacked the ring of truth, particularly when juxtaposed to his admittedly insistent objections to Respondent's approach.

Third, the surveillance videos in evidence could not corroborate much of Person A's hearsay account. Respondent testified that the disorderly conduct summons was based, in large part, on his threatening curses and comments and behavior from inside the vehicle. Unfortunately, because the recordings lack audio, we cannot hear the substance or tone of what was said. The recordings also shed minimal light on Person A's movements as he interacted with Respondent from the passenger seat of the BMW. Thus, the record is virtually devoid of evidence that substantially corroborates Person A's questionable hearsay narrative that Respondent was the provocateur.

Finally, as noted above, Person A was convicted of disorderly conduct in Bronx County Criminal Court following a bench trial. Although estoppel does not apply,[2] a conviction is a factor that can be taken into account when analyzing a charge accusing an officer of "wrongfully arrest[ing] an individual known to the Department when no offense or crime by said individual had occurred." Although not dispositive in a disciplinary trial, I cannot ignore that a criminal

[2] To apply collateral estoppel the burden lies on the proponent of estoppel to show the "identicality and decisiveness of the issue," while the opponent must establish "the absence of a full and fair opportunity to litigate the issue in a prior action or proceeding." Whether the first action genuinely provided a full and fair litigation opportunity requires consideration of the following factors: "the nature of the forum and the importance of the claim in the prior litigation, the incentive and initiative to litigate and the actual extent of litigation, the competence and expertise of counsel, the availability of new evidence, the differences in the applicable law and the foreseeability of future litigation." *Ryan v. N.Y. Tel Co.*, 62 N.Y.2d 494, 501 (1984). Here, although the two proceedings involve overlapping facts, they deal with different parties and different underlying claims. Moreover, it is undisputed that the videos in evidence here were not available at the criminal court trial.

court judge rendered a guilty verdict after conducting a bench trial where both Respondent and Person A were both present and testified.[3]

Moreover, important details of Respondent's account were credibly corroborated, in part, by Officer Awani. As set forth in more detail above, Awani told this tribunal that as Person A was sitting in the vehicle he heard him say, "you're not fucking touching me. You're not going to fucking cuff me. I have rights." Furthermore, Awani continued to hear Person A yell "you're not fucking touching me" as he escorted the driver to the police van. Although not a verbatim recitation of the facts as recounted by Respondent, Awani's testimony supports Respondent's contention that Person A cursed loudly and made threatening statements that could be heard yards away on a residential street.

In reaching this conclusion I acknowledge that Respondent's testimony was not impeccable and that she has also been found guilty of making inaccurate statements. These deficiencies, however, do not relieve DAO of its burden of proof. Given the numerous problems in Person A' s hearsay account, and that there was scant corroborating evidence to support one version over the other with respect to what occurred before Person A exited the car, the proof presented was insufficient to sustain the charge. Accordingly, Respondent is found not guilty of the misconduct set forth in Specification 2.

**Specification 1: False or Misleading Statement in Summons**
**Specification 4: Misleading or Inaccurate Statement at Department Interview**

In dispute is whether Respondent made false or misleading statements on the summons and at her Department interview. In reviewing false statement charges, the first consideration is whether the underlying incident in question did in fact occur. The second is whether a respondent made material deviations from the actual incident or intentionally misrepresented the

[3] It is undisputed that the videos presented here were not part of the record considered by the criminal court judge.

actual events in question. *See Dep't of Corr. v. Rodriguez*, OATH Index No. 277/06 (Mar. 29, 2006) at 11, 15-16. For the reasons set forth below I find that the statements at issue here deviated materially from what actually occurred.

In this case Respondent wrote the following on Person A's disorderly conduct summons:

> Factual Allegations (describe offense):
> At TPO defendant with intent to cause disruption, acted in a violent, threatening manner toward PO on a public sidewalk while trying to conduct an investigation. The defendant's actions in turn formed a crowd to form/gather.

At trial, Respondent explained that when she wrote in the summons that a "crowd" had formed, she meant that there "were people watching from the moment I took him out of the vehicle and even when . . . we put him in the vehicle, there were people still listening to him mouthing off...." (Tr. 104-05) She agreed that these people were not seen on the video but claimed they were "directly behind" her as well as "right where the van was on the next building behind" and leaning up against buildings. (Tr. 105)

The videos offered into evidence, however, contradict Respondent on this point. (Dep't Ex. 5) The sidewalk and street where the stop took place is captured by four different camera angles. These recordings, particularly the segment entitled "front sidewalk," show that there were no individuals "directly behind" Respondent or leaning up against nearby buildings. Likewise, although cars were stopped because the police van blocked the street, the videos do not support a finding that the drivers formed a crowd. Furthermore, there is no steady stream of people walking by, no significant number of people gathering together in one place or lingering and stopping to watch, as Respondent and Awani suggested at trial. At most, a few individuals

looked as they walked by and one person seems to be taking a halting stroll with his dog on the opposite sidewalk.[4]

Members of service are held to a high standard when completing official documents. Accuracy is required because it is key to the integrity of the Department and the criminal justice system. The issue in this case does not boil down to a matter of semantics. Respondent's assertion on the criminal court summons that Person A's actions on the sidewalk caused a crowd to form created a picture of the incident markedly different from what occurred and what was captured on the recordings. Even if Respondent perceived that individuals looked at them, her written statement on a criminal court summons was far from factual. Thus, Respondent did not satisfy her obligation to make a straightforward record of what actually occurred.

Moreover, the conduct depicted on the video once Person A exited the vehicle could not be characterized as physically aggressive. In fact, he holds his arms out in a manner that seems compliant. Although there is no audio, and his face is not visible at all times, the head movements captured on the videos do not give the impression of someone who is aggressive.[5] Based on this record I find that Respondent's representation on the summons that Person A "acted in a violent, threatening manner toward PO *on a public sidewalk*" [emphasis added] was inaccurate.

Accordingly, I find Respondent guilty of the misconduct charged in Specification 1.

Finally, because Respondent's statements at her Department interview supported the misleading narrative set forth as the basis for the arrest, I find the Department has proved that she impeded the Department's investigation. At her interview, Respondent asserted, "From when I got him out of the car, [there were] people watching . . . There were a lot there were people that

[4] I note that a few stray pedestrians can be seen throughout the recordings including in the following segments: *See* Dep't Ex. 5 "front sidewalk" view at 11:43:36-11:43:43, 11:45:04-11:45:10; "main courtyard" view at 11:43:44-11:43:51, 11:45:06; "main gate" view at 11:45:07-11:45:10; "1660 Andrews Ave front" view at 3:09-4:01, 6:18-6:35, 6:48-7:25, 7:48-8:20, 8:53-9:45.

[5] *See* Dep't Ex. 5 "main gate" view at 11:43:48-11:45:17.

were watching. I saw people in front of the building . . . . behind me on the sidewalk where I was." (Dep't Ex. 3 at 36-37) When shown the videos, she acquiesced there was no crowd "on your camera," but continued to insist, "there were other people coming around, looking . . . they stopped as he was mouthing off . . . ." (Dep't Ex. 3 at 45-46, 48-51) As noted above, the videos capture the sidewalk from a variety of angles as well as the area surrounding the stop. It is clear that no crowd gathered behind Respondent to watch her interaction with Person A. As such, the tribunal finds that at her official interview, having been warned on the importance of being truthful in her representations, Respondent continued to perpetuate an inaccurate narrative that a crowd had formed. For this reason, she is guilty of Specification 4.

**Specification 3: Improper Vehicle Search**

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by conducting a search of the BMW in which Person A was a passenger. Courts in this state have held that, with limited exceptions, a police officer must have probable cause of a crime to go into a citizen's car and inspect his or her personal effects. *See People v. Torres*, 74 N.Y.2d 224, 227 (1989). The primary issue before this Court, however, is not whether the car search was legal under search and seizure law, but whether Respondent's actions were shown to be unreasonable and therefore misconduct warranting disciplinary action. In this case, the record supports a finding that Respondent's actions constituted misconduct.

I base this finding largely on Respondent's own articulated reasons for conducting the search. Although at trial Respondent did not remember whether she searched the vehicle on the scene, the "main gate" video entered into evidence clearly captured her bending into the driver's side area of the BMW from 11:45:50 to 11:46:11 and the passenger side area from 11:46:27-11:47:57 and 11:48:50-11:51:53 while it was parked in front of 1665 Andrews Avenue. (Dep't

Ex. 5, "main gate" view)[6] The video also established that she started the search prior to the arrival of the sergeant. According to Respondent, she reported what had occurred to her sergeant once he arrived. As set forth in the transcript:

Q: What did the sergeant direct at that point in time?

Respondent: He asked if there was traps in the vehicle. I said I didn't check.

Q: And what did the sergeant then direct be done to the vehicle?

Respondent: He directed to check for traps. To bring it back to the house and check for traps.

In contrast, during her Department interview Respondent did recall searching the vehicle at the scene. Respondent first recounted that, "[upon arriving], the sergeant is asking what happened and I'm explaining . . .there's marijuana particles in the car; I don't know if there's a gun in the vehicle. So we have to bring the vehicle back and we have to search it. He said let's do a thorough search back at the precinct." The questioning continued:

Q: You searched the vehicle at the scene?

Respondent: We searched the vehicle on the scene and at the precinct.

Q: For what reason?

Respondent: I personally searched it because where he was, I felt there was something. It was either a weapon or something he was trying to conceal 'cause he moved back. I don't know if he threw something back, and there was some particles on the floor. (Dep't Ex. 3 at 31)

When asked by the investigator if an inventory search was conducted, Respondent asked what an inventory meant. Only after the investigator clarified that an inventory search involved vouchering the vehicle and recording the contents inside did Respondent equivocally agree that she did. (Dep't Ex. 3 at 31-32)

In sum, the search was done on her own volition as it was begun even before backup arrived. (Dep't' Ex. 5 "front sidewalk" 11:45:50) In fact, according to Respondent, the

[6] Person A did not mention the vehicle search during his IAB interviews.

sergeant's order was to take it to the precinct. Her testimony as to why she "personally" conducted the search did not establish an exigent circumstance to protect life or property. Although Person A was detained for disorderly conduct, there was no reasonable basis to believe the vehicle contained evidence of that offense or the offense of driving with a suspended license. Moreover, it is uncontested that at the time of the search both the driver and Person A were handcuffed in the police van and would not get immediate access to the car. See *Arizona v. Gant*, 556 U.S. 332 (2009). Finally, although Respondent testified that she detected the odor of marijuana, her supervisor's direction was to take the vehicle to the precinct for further investigation. Thus, Respondent's own testimony did not provide a reasonable explanation as to why the vehicle search was warranted at the scene. Accordingly, Respondent is found guilty of the misconduct set forth in Specification No. 4.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 7, 2008. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Department Advocate recommended a penalty of thirty (30) vacation days and one-year dismissal probation for the four specifications. This tribunal agrees that the instant charges are of a serious nature as police officers must be held to a high standard of truth, particularly when issuing summonses to and/or arresting members of the public. Even though this tribunal found that there was insufficient evidence to prove the arrest was wrongful, it is not incongruous to additionally find that Respondent's embellishments violated this very standard. Taking the gravity of the misconduct and also noting that Respondent was found not guilty of a false arrest,

this tribunal finds twenty-five (25) vacation days and one-year dismissal probation to be an appropriate penalty.

Such a penalty is consistent with those imposed in recent cases involving similar misconduct. In *Case No. 2009-531* (May 24, 2011), a seventeen-year police officer with no prior disciplinary record negotiated a forfeiture of thirty vacation days and dismissal probation after he pled guilty to submitting a Complaint Report, Arrest Report and a Stop, Question and Frisk report containing inaccurate and/or misleading information. That respondent also signed a Family Court Affidavit containing inaccurate information and failed to make complete Activity Log entries. Similarly, in *Case No. 2010-2947* (August 6, 2012), a twelve-year police officer with no prior disciplinary history negotiated a penalty of thirty vacation days and dismissal probation for completing and submitting a complaint indicating that he observed an individual resisting arrest when he had made no such observation. More recently, in *Case No. 2009 1098* (February 4, 2013), a six-year police officer with no prior disciplinary record forfeited thirty vacation days and was placed on one-year dismissal probation for making false statements in an arrest report, perpetuating this fabrication by making a false representation to an Assistant District Attorney and signing a sworn affidavit containing false information. In that case, respondent was assigned a driving while intoxicated arrest. Although the driver was found in a stationary vehicle passed out at the wheel, respondent wrote in the arrest report that the driver was swerving in and out of traffic.

Accordingly, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time she remains

on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that she forfeit 25 vacation days.

Respectfully submitted,

Rosemarie Maldonado
Deputy Commissioner Trials

**APPROVED**

MAY 23 2016
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CATHERINE THOMAS
TAX REGISTRY NO. 946318
DISCIPLINARY CASE NO. 2013-9978

Respondent was appointed to the Department on January 7, 2008. Her last three annual evaluations were 4.0 overall ratings of "Highly Competent" in 2012 and 2014 and a 4.5 rating of "Extremely/Highly Competent" in 2011. She has no medals.

She has no prior formal disciplinary history.

[redacted]

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trials