



POLICE DEPARTMENT

January 19, 2010

MEMORANDUM FOR: Police Commissioner

Re: Probationary Police Officer Jeffrey A. Rogers
Tax Registry 946182
104 Precinct
Disciplinary Case No. 84684/08

The above-named member of the Department appeared before the Court on
October 26, 2009, charged with the following:

1. Said Probationary Police Officer Jeffrey A. Rogers, assigned to the 71 Precinct, while on-duty, on or about September 20, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he incorrectly indicated on Department records that he was the arresting officer and had observed the subject of an arrest in possession of a lit marijuana cigarette when he was, in fact, the assigned officer and not present on the scene at the time of the incident. (*As amended*)

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

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

3. Said Probationary Police Officer Jeffrey A. Rogers, assigned to the 71 Precinct, while on duty, on or about September 20, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully caused two inaccurate instruments to be filed with the Kings County Criminal Court. (*As amended*)¹

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

¹ These charges and specifications were amended by the Department prior to trial and as part of the amendment withdrew Specification No. 2 from the original allegations and added Specification No. 3. Specification No. 2 alleged that the Respondent engaged in conduct prejudicial to the Department in that he “did wrongfully make false entries in Department records.” This Court therefore deems Specification No. 2 as dismissed.

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification Nos. 1 and 3, and he testified in mitigation of the penalty. The Assistant Department Advocate moved to dismiss Specification No. 2. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 and 3. The Department's motion to dismiss Specification No. 2 is granted.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified that he is currently assigned to the 104 Precinct. When he graduated from the Police Academy in July of 2008, he was assigned to the 71 Precinct to do foot patrol.

On September 20, 2008, the Respondent was working with Police Officer Huertes and Sergeant Walls. On that date, the Respondent had approximately ten weeks on patrol and, up until that time he had made two arrests in his career. The Respondent remembered that he worked overtime in a van, and that he helped Huertes process an arrest. While helping Huertes with the arrest, Walls assigned the Respondent a marijuana arrest that crime scene had brought to the precinct.

The Respondent was already at the precinct and waiting in front of the desk when the perpetrator was brought in. He was given the perpetrator's name and a marijuana

cigarette. Then he proceeded to search the perpetrator and found 13 “baggies of marijuana” inside a pocket. To his knowledge the Respondent was the first to find the bags of marijuana on the perpetrator. Once the perpetrator was searched and lodge inside a cell, the Respondent went downstairs with Police Officer Wang, where Wang performed a marijuana field test and told him what happened.

At that point, the Respondent began to do the arrest paperwork by himself. It was the first time he had ever been assigned an arrest, or a drug arrest. He remembered being instructed to charge the perpetrator with criminal possession of marijuana or criminal sale of marijuana. Since he did not witness any sale of marijuana he opted to charge the perpetrator with criminal possession, but “was told to void the arrest and change the top charge to criminal sale.”

The Respondent admitted to being responsible for some of the inaccuracies in the reports (Department Exhibit [DX] 1 is a packet of arrest paperwork related to this case). One of the inaccuracies that he admitted was his “fault” concerned the narrative on the second arrest, which stated that the “AO (arresting officer) observed” the offense, whereas his original complaint report had read, “the defendant was observed committing the offense.”

Another inaccuracy was that the Respondent checked the box on the supporting disposition that stated that he saw the lit marijuana cigarette. At the time of the incident, the Respondent was not aware that he could have used the words “informed by P.O. Wang or Sergeant Walls or the crime scene Sergeant Figueroa” in the paperwork. Also, the fact that he recovered 13 baggies from the perpetrator contributed to the problem he

had with the paperwork. When asked by the Court if he knew to use the term “informed by” he replied “No, had this happened two months later maybe I would have.”

The Respondent did not have anyone available to help him with the paperwork. The only person with him was Huertes, who had the same amount of time in the Department as he did, and had his own arrest to worry about. Walls was out in the field with the other officers. Walls subsequently signed the Respondent’s paperwork, but did not review it. The Respondent testified that besides his charges and specifications regarding the incident, Walls also received a schedule B Command Discipline for failure to supervise his paperwork. The Respondent further explained that he did not know any better, and if, at the time of the incident, he had more experience, he would have not taken the arrest, or he would have done a better job with it. He added that the term “informed by is like a common thing but I didn’t know that.”

The Respondent explained that as a result of these allegations, he was investigated in “a couple” of official Department interviews. He was placed on modified assignment, his gun and shield were taken away from him, and he was sent to Queens Court Section for about three months. Then he was restored to full duty and sent back to the 71 Precinct for a short time and eventually transferred to Queens, to the 104 Precinct. From this incident, the Respondent has learned what to do when assigned an arrest, and, to make sure that the paperwork is correct.

On cross-examination, the Respondent testified that he had made two arrests prior to the one in question, and had filled out the forms required for those arrests. He admitted to being familiar with the online booking system arrest worksheet and the

narrative section where what was observed is indicated. He also admitted to receiving training at the Police Academy on the arrest forms and how to fill them out.

The Respondent recalled that on September 20, 2008, he was at the precinct when he was assigned an arrest. He searched and lodged the prisoner. When the Respondent was given the arrest, it was his understanding was that he was the arresting officer and that "as long as they told me exactly what happened I should articulate properly....I was told that I had to take the collar it wasn't really articulating the differences of assigned or arresting I assumed things would be looked over if I did something wrong you know." He did not ask anyone for help even though there were higher ranking officers in the precinct at the time. The Respondent denied knowing the exact time the paperwork was done, but agreed it was "late." His tour that day was 2000 by 0405 hours.

On re-direct examination, the Respondent admitted being guilty of writing in the paperwork that he observed the offense. He explained that Walls signed his paperwork, but he was not "trying to fool her at any point." Because they were not going to take the arrest, Wang and Sergeant Figueroa, the apprehending officers, spoke to Walls, who gave the arrest to the Respondent. He was given the details of the arrest by Wang and Figueroa.

On re-cross examination, the Respondent explained that the first paperwork he filled out did not have the criminal sale of marijuana as a charge and that the paper work was voided to reflect that there was a sale involved. He agreed that when he searched the perpetrator at the desk and found the baggies of marijuana, the perpetrator at that time, was not charge with criminal sale of marijuana.

On re-direct examination, the Respondent explained that when the arrest was given to him, no one told him the perpetrator had tried to sell marijuana. He further explained that Figueroa wanted the original paperwork voided, and the perpetrator charged with the sale of marijuana because the perpetrator had 13 baggies and this indicated intent to sell. The Respondent admitted that the two supporting depositions sent to the Kings County District Attorney's Office were not done properly.

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 Department on January 7, 2008. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pled Guilty to indicating that he was the arresting officer on a marijuana case and that he observed the perpetrator in possession of a lit marijuana cigarette when in fact he was not present at the scene. He also pled Guilty to causing two inaccurate instruments to be filed with the Kings County Criminal Court.

The Respondent forthrightly took responsibility for not filling out the paperwork properly. It is important to note that he was still a probationary police officer at the time and processing this type of arrest was new to him. It is more important to note that he did not receive any supervision from Sergeant Walls as evidenced by Walls receiving a Command Discipline for failing to supervise.

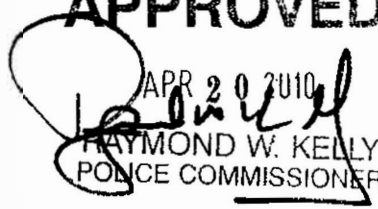
The Assistant Department Advocate has requested that the that the recommended penalty in this case should be a forfeiture of 30 vacation days and that he be placed on one year dismissal probation. It is here that this Court finds that a distinction must be made between this case and a false affidavit case that could merit such a penalty. The Respondent here is not charged with intentionally filing a false affidavit nor did he do so. He had just finished academy training only two months prior to this incident. He made errors based on his inexperienced and lacked supervision. Even a cursory check of his paperwork by Walls would have revealed his mistakes, but none was made. This Court finds that there was no intent on his part to mislead the District Attorney or the Criminal Court. The Respondent took on the responsibility of processing the arrest even though he was unsure of how to proceed. No doubt he should have asked for guidance but that mistake does not warrant a severe penalty or ongoing supervision.

Accordingly, I recommend that the Respondent forfeit a penalty of 10 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED


APR 20 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JEFFERY A. ROGERS
TAX REGISTRY NO. 946182
DISCIPLINARY CASE NO. 84684/08

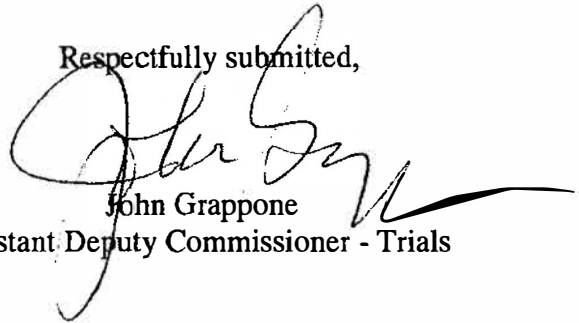
The Respondent was appointed to the Department on January 7, 2008.

The Respondent, on his last three performance evaluations in November 2008, May 2009 and November 2009, was rated 3.5, 3.0 and 3.0 respectively.

The Respondent's has no prior formal disciplinary record.

For your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Grappone', is written over the typed name and title.

John Grappone
Assistant Deputy Commissioner - Trials