POLICE DEPARTMENT CITY OF NEW YORK

December 27, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Numael Amador
Tax Registry No. 953634
Strategic Response Group 3
Disciplinary Case No. 2015-14572

Charges and Specifications:

1. Said Police Officer Numael Amdador,[1] on or about March 29, 2015, at approximately 2147 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of Maria Hernandez Park near Knickerbocker Avenue and Sutdam Avenue, Kings County, was discourteous to Daniel Teitell, in that Police Officer Numael Amdador stated to Daniel Teitell that he was, in sum and substance, a "smartass."

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

2. Said Police Officer Numael Amdador, on or about March 29, 2015, at approximately 2147 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of Maria Hernandez Park near Knickerbocker Avenue and Sutdam Avenue, Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he temporarily seized Daniel Teitell's cellular phone without sufficient legal authority.

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

3. Said Police Officer Numael Amdador, on or about March 29, 2015, at approximately 2147 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of Maria Hernandez Park near Knickerbocker Avenue and Sutdam Avenue, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he caused a summons to be issued to Daniel Teitell for being in violation of Parks Rules section 1-03(a) (3), remaining in the park after dusk despite the fact that there were signs posted, at the above-mentioned location, that states (sic) Park Rules prohibit entering the park after it is closed at 2200 hours.

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

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[1] Respondent's last name is spelled Amador.

4. Said Police Officer Numael Amdador, on or about March 29, 2015, at approximately 2147 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of Maria Hernandez Park near Knickerbocker Avenue and Sutdam Avenue, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he caused a summons to be issued to Daniel Teitell for being in violation of Parks Rules section 1-03(c) (2), failure to comply with signs in the park that allegedly state "park closes at dusk" despite the fact that there were signs posted, at the above-mentioned location, that states (sic) Park Rules prohibit entering the park after it is closed at 2200 hours.

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

5. Said Police Officer Numael Amdador, on or about March 29, 2015, at approximately 2147 hours, while assigned to the 83rd Precinct and on duty, in the vicinity of Maria Hernandez Park near Knickerbocker Avenue and Sutdam Avenue, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, by threatening to arrest Daniel Teitell, without sufficient legal authority, in that Numael Amdador stated to Daniel Teitell that he was going to spend at least one night in jail in order to teach Daniel Teitell a lesson.

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

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

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

Hearing Date:
October 3, 2016

Decision:
Respondent is found Guilty of Specification Nos. 3 and 4.
Respondent is found Not Guilty of Specification Nos. 1, 2 and 5.

Trial Commissioner:
ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 3, 2016. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Civilian Complaint Review Board (CCRB) administrative prosecutor called Daniel Teitell and Edward Gilkes as witnesses. Respondent testified on his 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 Guilty of Specification Nos. 3 and 4 and Not Guilty of Specification Nos. 1, 2 and 5.

FINDINGS AND ANALYSIS

On March 29, 2015, at about 2147 hours, Respondent was on duty, partnered with Police Officer Morales, assigned to the 83 Precinct, performing Operation Impact patrol duties in the vicinity of Knickerbocker Avenue and Sutdam Avenue, Brooklyn, when they approached Daniel Teitell who was inside Maria Hernandez Park ("the park"). Respondent had a verbal interaction with Teitell; he took Teitell's cell phone out of his hand and placed it in the pocket of Teitell's sweatshirt; he handcuffed Teitell; and he subsequently issued Teitell two summonses alleging that he had committed two offenses under New York City Parks Department Rules (NYCPDR).[2] Respondent issued Teitell a summons for being in violation of NYCPDR section 1-03(a)(3), remaining in the park after dusk (CCRB Ex. 1), and Respondent also issued Teitell a summons for being in violation of NYCPDR section 103(c)(2), that he had failed to comply with a sign in the park which allegedly stated that the park closes at dusk. (CCRB Ex. 2)

[2] These Rules can be found on the Parks Department's Official Website at www.nycgovparks.org/rules.

Daniel Teitell testified that he was present inside the park on March 29, 2015, at about 2130 hours, when he saw Respondent and another officer enter the park and approach a Hispanic man who was sitting on a bench inside the park. Respondent and the other officer spoke to the man, but Teitell could not hear what they said to him. Teitell heard the man tell the officers in an annoyed voice that he was not doing anything. When Teitell saw the officers physically lift the man off of the bench, Teitell became "concerned" and so he took out his cellular phone out of his pocket and began video recording the encounter. (CCRB Ex. 3)

Respondent immediately walked over to him and asked him how he was doing that evening. Respondent then asked him if he had ID on him. Teitell replied by asking Respondent if he was being detained or if he was free to go. When Respondent again asked him if he had ID on him, he again asked if he was being detained or if he was free to go. Respondent then grabbed the cell phone out of his hands, placed it in Teitell's pocket, and then handcuffed Teitell. The other officer patted down Teitell's clothing. Respondent asked him what his age was, what his address was, and other questions of that nature. Respondent also asked him questions such as where he grew up and where he went to school. Teitell told Respondent that he was "going to remain silent."

Teitell testified that Respondent called him "a smartass" several times and that he also sarcastically called him "a lawyer," and told him, "You think you're so smart, you think you know your rights. I'm going to show you what your rights really are." Respondent told him that it was his prerogative as to whether Teitell would be arrested and taken to a precinct or just issued summonses and released at the park. Respondent also told Teitell that because he was being a "smartass" and chose to assert his rights, he was going to take Teitell to jail and that he would spend at least one night in jail. Teitell did not reply to these remarks. Respondent then

told him, speaking slowly, "I'm taking your wallet out of your pocket now to take your ID so I can run you for warrants." Respondent and the other officer then walked over to their car.

When Respondent came back he told him that a sergeant was coming. When the sergeant arrived he spoke with Respondent and his partner and then walked over to Teitell and told the other officer to remove the handcuffs. They had been on Teitell's wrists for 20 minutes. The sergeant asked Teitell to tell him what had happened and after Teitell described his encounter with Respondent, the sergeant told Teitell that he should comply with orders issued by officers and that as long as the warrant check on his ID showed that he had no outstanding warrants, he would be "sent home with summonses." The sergeant then left the park. About 20 minutes later, Respondent handed Teitell the two summonses cited above and Teitell left the park.

Teitell returned to the park several days later and took photographs of signs posted at the park (CCRB Ex. 4A-C) to "gather evidence that I might use in a civil case," including the sign at the entrance to the park which states that "this park closes at 10pm." (CCRB Ex. 4B) The two summonses were dismissed on the first date that Teitell appeared in Criminal Court.

Teitell acknowledged that he began video recording the encounter between Respondent and the Hispanic man because, "It's been my experience and observation that people of color are often treated not as well by police officers." He confirmed that he had previously recorded other police interactions with civilians "because I believe that's the best way to hold police officers accountable in the event that they commit misconduct." After this incident, he joined an organization whose members are dedicated to recording and documenting police interactions with civilians.

Teitell confirmed that he filed a civil action against Respondent regarding this incident and that he received $20,000.00 from the City of New York to settle his lawsuit. Teitell was

confronted with the Notice of Claim ("The Notice") that his attorney filed to initiate his lawsuit (Rx. A). The Notice contains an allegation that Teitell had suffered "lost income" as a result of his encounter with Respondent. Teitell confirmed that this allegation was inaccurate because he had not suffered any loss of income. Teitell explained that he never told his attorney that he had suffered a loss of income, but that his attorney had, nonetheless, included this allegation in the Notice. Teitell confirmed that he had signed the Notice as the claimant and that he read it before he signed it. Teitell explained that when he signed this Notice, "It was my understanding that that was a generic document that included all those things that weren't specifically applicable to me."

Teitell was also confronted with the Complaint and Demand for Jury Trial ("Complaint") that his attorney prepared and filed regarding his lawsuit. Teitell confirmed that he had read and signed this Complaint. The Complaint contained an allegation that Teitell had suffered a "loss of property" as a result of his encounter with Respondent. Teitell testified that, "I personally do not claim that I lost any property" during this incident. He explained that his attorney had drafted the loss of property allegation in the Complaint; and that his attorney had "indicated to me that that was a generic statement of which some of things in that statement were accurate, to my understanding."

Edward Gilkes, a New York City Parks Department supervisor, manages parks in the Bushwick area of Brooklyn including Maria Hernandez Park which, since 2010, has had a Parks Department sign posted at the entrance to the park which states that "this park closes at 10pm." (CCRB Ex. 4B). He confirmed that some parks in the Bushwick area close at dusk.

Respondent's testimony at this trial will be discussed under the Analysis section.

Analysis

Specification Nos. 3 and 4

Respondent testified at this trial that although on March 29, 2015, he genuinely believed that Teitell was violating park rules by being present inside the park after dusk, he now realizes that the summonses he issued to Teitell (CCRB Exs.1 & 2) "were invalid" since Teitell had not violated any rule by being present inside the park prior to 2200 hours because the park did not close until 2200 hours.

Respondent's attorney argued that because, as Gilkes testified, some parks in the Bushwick area close at dusk, Respondent's issuance of the summonses merely constituted a mistake based on a reasonable assumption, not misconduct, and that the sergeant who arrived at the scene should have corrected Respondent's mistake. However, as the officer who was issuing the summonses, it was Respondent's duty to personally insure that his summonses were legally valid,[3] and it is clear that he did not bother to look at the park rules on the sign posted at the entrance to the park which Gilkes testified has been there since 2010 and which clearly states that "(t)his park closes at 10 pm." (CCRB Ex. 4B). Therefore, Respondent is found guilty of Specification Nos. 3 and 4.

Specification Nos. 1 and 5

The only evidence offered by the Administrative Prosecutor to meet her burden of proving that Respondent spoke discourteously to Teitell by calling him a "smartass" and that he also threatened to arrest Teitell by telling him that he was going to spend at least one night in jail in

[3] See *Case No. 2010-86522* (signed Nov. 27, 2012), where an officer was found guilty of having issued a summons for Disorderly Conduct without sufficient legal authority because the officer mistakenly believed that he could charge a person with Disorderly Conduct even though he had not ordered the person to disperse, an order which constituted an essential element of the subdivision the officer charged the person with violating.

order to teach him a lesson, was the testimony of Teitell himself. I find that Teitell's testimony, standing alone,[4] constitutes insufficiently reliable evidence to support guilty findings regarding these two charges.

Teitell's testimony must be closely scrutinized in light of the fact that he betrayed what can be characterized as preconceived notions about police encounters with civilians. Teitell acknowledged that he began recording the encounter between Respondent and the Hispanic man because, "It's been my experience and observation that people of color are often treated not as well by police officers," and that he had previously recorded other police interactions with civilians "because I believe that's the best way to hold police officers accountable in the event that they commit misconduct."

It is not disputed that Teitell did not tell either Respondent or the sergeant that his presence inside the park was lawful. Although Teitell knew that the park did not close until 10 p.m. and that his presence inside the park was, therefore, lawful, he admitted that when Respondent handed him summonses charging him with being inside the park after dusk, he did not inform Respondent that the charges were invalid. Thus, instead of seeking to avoid being served with the summonses, he allowed Respondent to serve him with summonses he knew were invalid. He asserted that he had not told Respondent or his partner that the charges were invalid because he "didn't have any reasonable belief that they would, you know, tear up the summons or anything at the time if I had said that." (Tr. 98).

However, Teitell's claim that he did not trust Respondent or his partner to void the invalid summonses does not explain why, after the sergeant told him that he would be "sent home with summonses," he did not inform the sergeant that the park did not close until 10 p.m. (Tr. 95).

[4] Since the audio recorder on Teitell's cell phone was not working properly, there is no audio recording of what Respondent said to Teitell.

The sergeant had not been a party to Teitell's "traumatizing experience." (Tr. 98). On the contrary, it was the sergeant who ordered that he be unhandcuffed. The fact that Teitell did not tell the sergeant that the park did not close until 10 p.m. so that he could avoid being improperly charged with offenses he knew were invalid supports Respondent's position that Teitell wanted to be charged by Respondent so that he could sue Respondent. Teitell admitted that when he returned to the park just days later and took photographs of the signs posted at the park (CCRB Ex. 4A-C) he did so in order to "gather evidence that I might use in a civil case."

The reliability of Teitell's testimony must also be questioned in light of the fact that he signed two legal documents regarding his civil suit against Respondent even though he was aware that each of the documents contained an inaccurate factual allegation.

The Complaint that Teitell read and signed contains the allegation that Teitell had suffered a "loss of property" as a result of his encounter with Respondent. Teitell testified at this trial that he suffered no loss of property during this incident. Teitell asserted that his attorney had "indicated to me that that was a generic statement of which some of things in that statement were accurate, to my understanding." (Tr. 79-80).

The Notice contains the assertion that Teitell had "lost income" as a result of his encounter with Respondent. (RX A p. 2). Teitell read this Notice and signed it on June 4, 2015, only 25 days before he was interviewed about this incident at CCRB on June 29, 2015. Teitell asserted at this trial that when he signed this Notice, "It was my understanding that that was a generic document that included all those things that weren't specifically applicable to me." (Tr. 77).

However, on the "Verification" page of the Notice a paragraph immediately above the line where Teitell signed as "Claimant" states: "I, Daniel Teitell, being duly sworn, deposes and says: I am the claimant, and have read the foregoing Claim and know the contents thereof; that

the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief and that as to those matters I believe them to be true." Thus, the false statement contained in the Notice that Teitell had "lost income" as a result of his encounter with Respondent was made by him pursuant to an oath, just as his testimony at this trial was under oath. Since I find that Teitell's trial testimony is insufficiently reliable, Respondent is found not guilty of Specification Nos. 1 and 5.

Specification No. 2

Respondent is charged with having "temporarily seized Daniel Teitell's cellular phone without sufficient legal authority." It is not disputed that Respondent took Teitell's phone out of his hand and placed handcuffs on Teitell's wrists. The Administrative Prosecutor asserted that Respondent's real motive in taking Teitell's phone of his hand and placing handcuffs on Teitell was that Respondent was annoyed that Teitell had started video recording Respondent's interaction with another man in the park. (Tr. p. 150)

However, Respondent is not charged here with having prevented Teitell from recording Respondent's actions and, even if he was, the record does support the Administrative Prosecutor's claim that Respondent only took Teitell's phone out of his hand because Respondent was annoyed that Teitell was recording Respondent's actions. The video in evidence shows that when Respondent walked over to Teitell, he did not immediately snatch his cell phone out of his hand. On the contrary, the video (CCRB Ex. 3) shows that he allowed Teitell to continue recording as he began conversing with Teitell. Also, when Teitell was asked on cross-examination, "So (is it) fair to say he took the phone out of your hand so that he'd be able to handcuff you?' Teitell answered, "Yes." (Tr. 92). Thus, Teitell's testimony supports Respondent's claim that he only took the cell phone out of Teitell's hand so that he could place

handcuffs on Teitell's wrists. Moreover, Teitell confirmed that Respondent never examined the phone, never pressed any buttons on the phone, and never turned the phone off or tampered with it. (Tr. 92).

As to that part of the charge that alleges that Respondent "temporarily seized" Teitell's cell phone, Teitell corroborated Respondent's claim that his possession of the phone was extremely temporary. Teitell testified that after Respondent took the cell phone out of his hands, he only held it "one or two seconds" (Tr. 49) before he placed it into the pocket of Teitell's sweatshirt. Since Respondent immediately returned Teitell's phone to him, I find that Respondent's extremely brief possession of the phone does not, by itself, constitute actionable misconduct. Therefore, Respondent is found Not Guilty of Specification No. 2.

PENALTY RECOMMENDATION

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 9, 2013. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no prior disciplinary record.

The CCRB Administrative Prosecutor recommended that Respondent forfeit 20 vacation days as a penalty. However, of the five specifications he was charged with, Respondent has only been found guilty of issuing two invalid summonses for violating park rules.

In *Case No. 2013-9872* (signed June 17, 2015), a 13-year officer who had no prior disciplinary adjudications forfeited two vacation days as a penalty after he pleaded guilty to a charge brought by CCRB that he had issued a summons to an individual for trespassing which was invalid. The veteran officer in that case also pleaded guilty to the additional charge that he had stopped the individual without sufficient legal authority.

Similarly, in *Case No. 2014-12345* (signed Sept. 1, 2015), an eight-year officer who had no prior disciplinary adjudications forfeited two vacation days as a penalty after he was found guilty at trial of having issued two summonses for obstructing vehicular and pedestrian traffic which were invalid because the individuals had not, in fact, committed that offense.

Therefore, I recommend that Respondent forfeit two vacation days as a penalty.

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAY 0 4 2017

JAMES P. O'NEILL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NUMAEL AMADOR
TAX REGISTRY NO. 953634
DISCIPLINARY CASE NO. 2015-14572

Respondent received an overall rating of 3.5 on his 2015 annual performance evaluation, 3.5 on his 22-month probationary evaluation, and 3.5 on his 16-month probationary evaluation. He has no medals. [redacted] He has never been designated Chronic Sick. He has no prior disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials