



OFFICE OF THE POLICE COMMISSIONER
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March 27, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Philip Liberti**
Tax Registry No. 938857
43 Precinct
Disciplinary Case No. 2016-16168

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on January 29, 2018, charged with the following:

DISCIPLINARY CASE NO. 2016-16168

1. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County did fail and neglect to notify the radio dispatcher of a vehicle pursuit and provide the nature of offense.

P.G. 221-15, Page 1, Paragraph 3

VEHICLE PURSUITS

2. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County did fail and neglect to terminate a vehicle pursuit after temporarily losing sight of said suspect.

P.G. 221-15, Page 1, Note

VEHICLE PURSUITS

3. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, improperly struck a vehicle during a vehicle pursuit and intentionally utilized a Pit Maneuver on the subject vehicle.

P.G. 221-15, Page 3

**ADDITIONAL DATA
VEHICLE PURSUITS**

4. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit, said Police Officer provided misleading and inaccurate statements to Sergeant James Nyhus regarding a Department Vehicle accident resulting in inaccurate information included in Department paperwork.

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

**PUBLIC CONTACT - PROHIBITED
CONDUCT - GENERAL**

5. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit, said Police Officer included misleading and inaccurate statements in the Arrest Report and sworn Kings County Criminal Court Complaint pertaining to the vehicle pursuit and accident. (As amended)

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

**PUBLIC CONTACT - PROHIBITED
CONDUCT - GENERAL**

In a Memorandum dated March 6, 2018, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Philip Liberti Guilty, after he pleaded Guilty, to Specification Nos. 1,2,3,4 and 5, in Disciplinary Case No. 2016-16168. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Police Officer Liberti.

I have considered the totality of the misconduct to which Police Officer Liberti pleaded Guilty, and deem that a greater penalty and a period of monitoring is warranted. Therefore, Police Officer Liberti's disciplinary penalty shall be the forfeiture of fifty (50) vacation days and one (1) year dismissal probation.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

March 6, 2018

-----X

In the Matter of Charges and Specifications	:	Case No.
- against -	:	2016-16168
Police Officer Philip Liberti	:	
Tax Registry No. 938857	:	
43 Precinct	:	

-----X

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

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
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 JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County did fail and neglect to notify the radio dispatcher of a vehicle pursuit and provide the nature of offense.
P.G. 221-15, Page 1, Paragraph 3 – VEHICLE PURSUITS
2. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County did fail and neglect to terminate a vehicle pursuit after temporarily losing sight of said suspect.
P.G. 221-15, Page 1, Note – VEHICLE PURSUITS
3. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, improperly struck a vehicle during a vehicle pursuit and intentionally utilized a Pit Maneuver on the subject vehicle.
P.G. 221-15, Page 3 – ADDITIONAL DATA VEHICLE PURSUITS
4. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit, said Police Officer provided misleading and inaccurate statements to Sergeant James Nyhus regarding a Department Vehicle accident resulting in inaccurate information included in Department paperwork.
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT - GENERAL
5. Said Police Officer Philip Liberti, while assigned to the 72nd Precinct, while on-duty, on or about June 2, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit, said Police Officer included misleading and inaccurate statements in the Arrest Report and sworn Kings County Criminal Court Complaint pertaining to the vehicle pursuit and accident. (*As amended*)
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT - GENERAL

SUMMARY OF FINDINGS AND RECOMMENDED PENALTY

The above-named member of the Department appeared before me on January 29, 2018.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the mitigation hearing, assessing the credibility of Respondent, and Respondent having pled

Guilty to all charges, I find Respondent Guilty and, recommend a penalty of the loss of forty (40) vacation days.

ANALYSIS

As Respondent pled Guilty to all the charges in this case, there is no dispute as to his misconduct on June 2, 2016. A video was also admitted into evidence which documents the vehicle pursuit and accident portions of the charges. (Dep't. Ex. 1) In the video, Respondent can be seen driving his police vehicle on the sidewalk and hitting the vehicle he was chasing. The collision caused that vehicle to go on the sidewalk and knock over a traffic pole. The traffic pole fell onto the street in an area where pedestrians, including a woman with a baby stroller, were walking.

Respondent, in his testimony, acknowledged that he did not follow the proper procedures during the vehicle pursuit. Specifically he testified that he should have called the pursuit in over the radio, should never have driven his vehicle on the sidewalk and should not have hit the other vehicle. (Tr. 12-13)

Respondent admitted that he provided misleading and inaccurate information about the incident to his supervisor and also included inaccurate information in line of duty paperwork as well as the arrest report and the complaint submitted to the DA's office. (Tr. 15)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate requested a penalty in this case of the forfeiture of fifty (50) vacation days and one year dismissal probation. Respondent, through his counsel, has argued that the penalty should be mitigated for reasons which include that Respondent has an exceptional record in his twelve and a half years of service and in this incident he briefly forgot his training in his effort to try to stop a vehicle he thought was creating a danger. He also argued that Respondent has been punished for the incident in that he was modified for six months, was transferred to a different command, and has been prohibited from driving a Department vehicle for six months. (Tr. 23-24) Respondent also testified that as a result of this incident he would be receiving training before he was allowed to drive a police vehicle again. (Tr. 16)

Respondent's counsel suggested that the penalty requested by the Advocate was excessive and more in line with DWI cases. He suggested an alternative penalty of the loss of substantial vacation days or a short suspension but argued there was no need for dismissal probation. (Tr. 27)

The Advocate argued that while no pedestrian was injured, Respondent's actions put numerous individuals at risk. He cited Department precedent for vehicle cases including Case Nos. 2013-9680 & 2013-9681 (August 22, 2014) (two police officers with no prior discipline negotiated a penalty of 25 vacation days each for failing to notify the radio dispatcher of a vehicle pursuit, failing to immediately request a supervisor, and failing to provide a supervisor with facts of the incident in which a collision occurred resulting in the death of a bus driver); Case No. 2013-10495 (January 26, 2015) (police officer with no prior discipline negotiated a penalty of 15 vacation days for engaging in a vehicle pursuit without making a radio notification, failing to activate the turret lights, and failing to transmit the final disposition); Case No. 2015-14704 (August 10, 2016) (police officer with no prior disciplinary history forfeited 25 vacation days for providing false and misleading statements to his supervisor regarding a motorcycle


accident that was the result of a vehicle pursuit); Case No. 2010-525 (December 9, 2013) (police officer with no prior disciplinary history negotiated a penalty of the forfeiture of 30 suspension days already served, 20 vacation days, and one year dismissal probation for making inaccurate statements in an affidavit and subsequently falsely swearing to inaccurate statements.

The court has found recent cases concerning vehicle pursuits and wrongful uses of Department vehicles. In Case Nos. 2016-16526 & 2016-16536, signed December 7, 2017, an eleven-year police officer, with no prior disciplinary history, and twenty-four-year police officer, with one prior formal adjudication, negotiated a penalty of 15 vacation days each for (i) failing to terminate a vehicle pursuit when the risk to the public outweighed the dangers of immediate apprehension of a suspect, and (ii) improperly utilizing a Department van in a vehicle pursuit. Co-Respondents engaged in a vehicle pursuit while traveling in a police van, which resulted in a high speed chase of a driver who refused to pull over. The pursuit ended after the driver drove the wrong way into oncoming traffic and crashed head-on with another vehicle, resulting in the death of the other vehicle's passenger. In a case involving an improper vehicle use and false statements, such as the present case, Case No. 2016-16786, signed October 23, 2017, an eleven-year police officer with one prior adjudication negotiated a penalty of 25 vacation days for (i) operating his assigned Department vehicle in an unsafe manner by wrongfully placing his moving Department vehicle in a position to be struck by a pursued vehicle, wrongfully striking a pursued vehicle, or wrongfully driving alongside a pursued vehicle, and (ii) making inaccurate, incomplete, or other misleading statements during a Department interview, a CCRB interview, or an interview by a duty captain regarding his actions.

In Respondent's case, his actions, in greatly endangering pedestrians, as well as himself, combined with his failure to accurately report what happened require a strong penalty. It is only by pure good luck in this case that one of the pedestrians seen on the video was not knocked

over, or worse, either by a vehicle or the light pole which crashed down. However, the penalty recommended by the Advocate is somewhat higher than that suggested by the most recent precedent. I have also considered that Respondent credibly and unequivocally testified that he understood the wrongful nature of his actions and would be receiving training to prevent any future similar incidents. In light of the precedent and Respondent's unambiguous acknowledgment of his misconduct, I recommend a penalty of the loss of forty (40) vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PHILIP LIBERTI, TAX REGISTRY NO. 938857,
DISCIPLINARY CASE NO. 2016-16168

Respondent was appointed to the Department on July 11, 2005. On his last three annual performance evaluations, Respondent twice received an overall rating of 4.0 "Highly Competent," and most recently received an overall rating of 4.5 "Extremely Competent/Highly Competent." He has not been awarded any medals. [REDACTED]

On October 13, 2016, Respondent was placed on Level I Disciplinary Monitoring based on his history with the Department; that monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials