



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

April 13, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Justin Jamison**
Tax Registry No. 951846
Housing PSA 3
Disciplinary Case No. 2015-13116

Police Officer Kellan O'Neill
Tax Registry No. 952069
Housing PSA 3
Disciplinary Case No. 2015-13117

The above named members of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on July 7, 2016, charged with the following:

DISCIPLINARY CASE NO. 2015-13116

Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1640 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he unlawfully detained Shawn Thomas.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department in that he issued an adult in playground without a child under the age of 12 summons to Shawn Thomas without sufficient legal authority.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued an obstructing a park bench summons to Shawn Thomas without sufficient legal authority.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

POLICE OFFICER JUSTIN JAMISON
POLICE OFFICER KELLAN O'NEILL

DISCIPLINARY CASE NO. 2015-13116
DISCIPLINARY CASE NO. 2015-13117

Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a possession of a glass bottle in the park summons to Shawn Thomas without sufficient legal authority.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2015-13117

Said Police Officer Kellan O'Neill, on or about October 2, 2014, at approximately 1640 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he unlawfully detained Shawn Thomas.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated October 11, 2016, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Justin Jamison Guilty of Specification Nos. 1, 2, 3 and 4 in Disciplinary Case No. 2015-13116, and found Police Officer Kellan O'Neill Guilty of the sole Specification in Disciplinary Case No. 2015-13117. Having read the Memorandum and analyzed the facts of this matter, I approve the findings and the penalty for Police Officer O'Neill, and I approve the findings but disapprove the penalty for Police Officer Jamison.

I have considered the totality of the issues and circumstances concerning the disciplinary case against Police Officer Jamison, and deem that a lesser penalty is warranted. Therefore, Police Officer Jamison is to forfeit two (2) vacation days, as a disciplinary penalty.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

October 11, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Justin Jamison
Tax Registry No. 951846
Housing PSA 3
Disciplinary Case No. 2015-13116

Police Officer Kellan O'Neill
Tax Registry No. 952069
Housing PSA 3
Disciplinary Case No. 2015-13117

Charges and Specifications:

Disciplinary Case No. 2015-13116

1. Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1640 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he unlawfully detained Shawn Thomas.
P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
2. Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued an adult in playground without a child under the age of 12 summons to Shawn Thomas without sufficient legal authority.
P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
3. Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued an obstructing a park bench summons to Shawn Thomas without sufficient legal authority.
P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

4. Said Police Officer Justin Jamison, on or about October 2, 2014, at approximately 1810 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a possession of a glass bottle in the park summons to Shawn Thomas without sufficient legal authority.

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

Disciplinary Case No. 2015-13117

1. Said Police Officer Kellan O'Neill, on or about October 2, 2014, at approximately 1640 hours, assigned to PSA 3 and on duty, inside the PSA 3 stationhouse, Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he unlawfully detained Shawn Thomas.

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

Appearances:

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

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

Hearing Date:

July 7, 2016

Decision:

Respondents are found guilty as charged

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on July 7, 2016.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The

Civilian Complaint Review Board (CCRB) administrative prosecutor called Shawn Thomas as a

witness. Each 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 Respondents guilty as charged.

FINDINGS AND ANALYSIS

On October 2, 2014, Respondents were on duty, assigned to Police Service Area 3, performing patrol duties in a marked Radio Motor Patrol car ("RMP") in the area of a housing development located across the street from Commodore Barry Park in Brooklyn ("the park"). They observed Shawn Thomas inside the park. They stopped their RMP and initiated a verbal interaction with him. Respondents then exited their RMP, approached Thomas and engaged in a further verbal exchange with him. Respondents frisked Thomas, handcuffed him, placed him inside their RMP and transported him to PSA 3.

At PSA 3, Respondent Jamison placed Thomas in a holding cell and conducted a warrant check on Thomas which yielded negative results. Respondent Jamison then returned Thomas' personal property to him, issued Thomas three summonses, and released him from custody. The three summonses Respondent Jamison wrote out and handed Thomas charged him with violating New York City Parks Department Park Rules by committing the offenses of "glass bottle in park;" "obstruct park bench;" and "adult in playground without child under 12." [CCRB Exhibit (CCRBX) 1]

Thomas testified at this trial that he went to the park that afternoon to test the photographic capabilities of his new iPhone. He described himself as "a formal photographer," although he does not presently own or work at a studio or a store. Inside the park, he took a photo, edited it and waited while it uploaded. Thomas testified that he was leaning up against a

concrete table with his feet on the ground. On the table was a soft drink bottle which was protruding out of a ripped paper bag. Since he wanted to take another photo and the bottle inside the bag was in his line of sight, he moved the bottle so that it would not appear in his photo. After he took the photo, he picked up the bag containing the bottle intending to toss it into a garbage can.

At this point, Respondents pulled up to him and stopped their RMP near him. Thomas used his cell phone to record their conversation (CCRBX 3). Respondent O'Neill asked him what was in the bag. Thomas responded, "None of your business," because he believed that he was under no legal obligation to answer this question. Respondent O'Neill replied, "Now it's my business." Both Respondents exited their RMP. Respondent O'Neill demanded to see what was in the bottle that was inside the bag. Thomas responded, "It's none of your business." Thomas asked Respondents what reasonable suspicion or what probable cause they had to stop him and what crime had he committed. Respondents demanded that he produce identification. Even though he had a state-issued ID card inside his wallet which was in pocket, he told them that he did not have identification on him because he believed that he had no lawful obligation to present his ID. Respondent Jamison told him that because he had produced no ID, they would have to take him to the precinct. Respondent Jamison also told him that he had committed a violation, but Respondent Jamison did not tell him that he had been obstructing anything.

Respondent Jamison then took Thomas' cell phone out of his hand, frisked him, removed his wallet and keys from his pockets, and handcuffed him. At PSA 3, Thomas was inside a holding cell for about 90 minutes while Respondent Jamison verified his identity, having located the state-issued ID inside Thomas' wallet. The ID listed an address in [REDACTED] New York where Thomas no longer resided.

After Thomas was released him from custody, he returned to the park and took photos of the Parks Department signs posted inside the park. [CCRBX 2] The three summonses were dismissed when Thomas appeared in court. Thomas has not filed a lawsuit against Respondents. He does have a pending lawsuit against other officers who are assigned to PSA 3 regarding an encounter that took place after October 2, 2014.

Thomas acknowledged that he has a YouTube channel where he has posted "at least a dozen" videos depicting his encounters with officers over the past three years, including this encounter. He admitted that he has used profane language in addressing other officers, such as telling them they had "no fucking reason to approach" him, calling officers "incompetent" and "fucking morons," and referring to both Caucasian and African American officers as "niggers." He confirmed that since September, 2015, he has posted paid advertisements on his videos through a partnership with a Canadian company. He also agreed that he recently began soliciting donations on his YouTube channel through a PayPal account. He was unsure if he had made any money from posting his video of his encounter with Respondents. Thomas asserted that he has never initiated or provoked any of his encounters with police officers. He agreed he has taken photos of the PSA 3 stationhouse.

Respondent O'Neill asserted that he had seen Thomas "obstructing the park bench he was sitting on" by sitting "not where the seat is" but on top of the back rest with his feet on the seat of the bench. Respondent O'Neill agreed that since it was a single-person bench, if Thomas had been sitting on the seat of the bench, he would not have been obstructing anyone else's use of that bench and that Thomas was not obstructing any other benches. Respondent O'Neill testified that when he observed the top of a glass bottle protruding from a brown bag that was adjacent to Thomas, he believed it might be an alcoholic beverage and so he asked Thomas what was in the

bottle. When Thomas told him that it was none of his business, he asked Thomas, "It's none of my business?" At this point both Respondents stepped out of their RMP. When Respondent Jamison asked Thomas for identification, he stated that he did not have any ID and asked them to articulate their probable cause for stopping him. He told Thomas that he had committed a violation and that they needed identification to positively identify Thomas to prepare a summons and to do a warrant check.

Respondent O'Neill advised Thomas that if he could not produce ID, he would have to be brought back to the precinct. He confirmed that if Thomas had presented identification, they could have called in a warrant check over the phone or radio and had someone run Thomas' name in the automated databases. Believing Thomas' statement that he had no identification on him, they transported him to PSA 3. Respondent O'Neill testified that he did not process any of the paper work for the summonses and that he had no contact with Thomas at the precinct after bringing him to the prisoner lodging area. He did not know what summonses Thomas was issued by Respondent Jamison.

Respondent Jamison recalled that after Thomas stated he had no ID on him, they informed him that he committed a violation and that if he did not have any ID on him they were required to take him to the precinct to verify who he was and to do warrant checks. Thomas responded, "Okay." Respondent Jamison then asked him multiple times to "proceed off the bench he was obstructing," and when he did not do so, he grabbed his wrist and pulled him up from the bench. He then went through Thomas' pockets, removing keys and a wallet. He found Thomas' ID inside his wallet when he searched it at PSA 3.

Respondent Jamison's testimony regarding the three summonses he issued to Thomas will be discussed in the Analysis section below.

Analysis

Both Respondents are charged with having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by unlawfully detaining Thomas and Respondent Jamison is also charged with having issued three summonses to Thomas without sufficient legal authority. I find Respondents guilty based on their own testimony; the offenses charged in the three summonses that Respondent Jamison issued to Thomas; and the photos Thomas took of Parks Department signs that are posted in the park.

Respondents acknowledged that they detained Thomas by handcuffing him in the park, placing him inside their RMP, transporting him to PSA 3 and placing him in a holding cell. Respondents asserted that their action of detaining Thomas was lawful because they had personally observed Thomas violating park rules.

Both Respondents testified that the legal basis for their detention of Thomas was that he had violated New York City Parks Department Park Rules. Thus, the disposition of these charges hangs on the question of whether Thomas was properly charged with having committed one or more offenses contained within the Parks Department's Park Rules.

The summons that Respondent Jamison issued to Thomas for committing the offense of "obstruct park bench" (CCRBX 1) cites to New York City Parks Department Rules (NYCPDR)¹ section 1-04(o.), "Obstruction of sitting areas," which states: "No person shall use a bench or other sitting area so as to interfere with its use by other persons, including storing any materials thereon."

Thomas testified at this trial that he was leaning up against a concrete table with his feet on the ground. Respondent Jamison testified at this trial that he saw Thomas sitting on top of

¹ These Rules can be found on the Parks Department's Official Website at www.nycgovparks.org/rules.

the backrest of a "bench chair" with his feet on the part of the bench chair "where you would normally sit down." However, on cross examination, Respondent Jamison was confronted with the fact that at his CCRB interview he had stated that Thomas had been using a table as a seat. When Respondent Jamison was asked how Thomas had obstructed a sitting area, he merely asserted that Thomas was "obstructing the park bench he was sitting on" in that he was sitting "not where the seat is."

Even if I credited Respondent Jamison's trial testimony, despite the fact that it conflicts with the statement he made at his CCRB interview, I find that his description of how Thomas was sitting on the bench chair insufficiently establishes that Thomas was seated in a manner which could interfere with its use by other persons. Therefore, Respondent Jamison had an insufficient basis to charge Thomas with this offense.

The summons that Respondent Jamison issued to Thomas for committing the offense of "adult in playground without child under 12" (CCRBX 1) cites to NYCPDR section 1-05 "Regulated Uses" which, under section s. "Exclusive Areas," states, under subsection 1., "Exclusive Children's Playgrounds: Adults allowed in playground areas only when accompanied by a child under the age of twelve (12)."

At this trial, Thomas testified that he was never closer than 25 feet from the entrance to the playground and Respondent Jamison acknowledged that Thomas was never inside the playground, only near it. Respondent Jamison asserted that when he issued this summons to Thomas he believed that the rule that an adult had to be accompanied by a child applied to the entire park or at least to those areas of the park that are in close proximity to the playground area. Respondent Jamison conceded that he now realizes that he should not have issued Thomas a summons for being an "adult in a playground without child under 12."

Finally, the summons that Respondent Jamison issued to Thomas for committing the offense of "glass bottle in park" (CCRBX 1) cites to NYCPDR section 1-04(d.), "Restrictions on Glass," which states: "The Commissioner may, in his or her discretion, designate certain parks, or portions thereof, as restricted areas wherein no glass bottles or other glass containers will be permitted. Failure to comply with such restrictions shall constitute a violation of these rules." The plain language of this provision establishes that it is not an offense to possess a glass bottle inside a park unless the Parks Commissioner has designated the entire park, or that portion of the park where the glass possession is taking place, as a restricted area where no glass bottles are permitted.

It is not disputed that Respondent Jamison saw Thomas holding a glass bottle inside the park. However, the photos that Thomas took of the Parks Department signs posted inside the park (CCRBX 2), include a photo of the "Welcome to your park" sign posted at the entrance to the park. This sign contains a list of nine things that "Park rules prohibit" inside the park. This list does not include glass bottles. The fact that the Parks Department sign posted at the entrance to the fenced-in children's playground area explicitly prohibits "glass bottles" within the playground, supports the conclusion that the area of the park where Thomas was when he was holding the glass bottle was not a designated restricted area where no glass bottles are permitted. Therefore, Respondent Jamison had an insufficient legal basis to charge Thomas with having committed this offense.

In conclusion, Respondent Jamison had an insufficient factual and/or legal basis to charge Thomas with any of the offenses he cited in the three summonses that he issued to Thomas. As a result, Respondents had insufficient legal authority to detain Thomas. Therefore, Respondents are found guilty as charged.

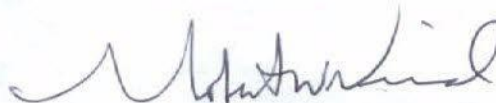
PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondents were both appointed to the Department on January 9, 2012. Information from their personnel records that was considered in making these penalty recommendations is contained in attached confidential memoranda. Neither Respondent has a formal disciplinary record.

The CCRB administrative prosecutor recommended that Respondent Jamison forfeit five vacation days as a penalty and that Respondent O'Neill receive a reprimand as a penalty. In light of the fact that neither Respondent has any previous disciplinary adjudications, I concur with the administrative prosecutor's recommendations.

Therefore, I recommend that Respondent Jamison forfeit five vacation days as a penalty and that Respondent O'Neill receive a reprimand as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JUSTIN JAMISON
TAX REGISTRY NO. 951846
DISCIPLINARY CASE NO. 2015-13116

Respondent received an overall rating of 4.5 on his 2015 evaluation, 3.5 on his 2014 evaluation, and 4.0 on his 16-month probationary evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]
[REDACTED] He has no formal disciplinary record. He has no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KELLAN O'NEILL
TAX REGISTRY NO. 952069
DISCIPLINARY CASE NO. 2015-13117

Respondent received an overall rating of 4.5 on his 2015 evaluation, 4.0 on his 2014 evaluation, and 4.0 on his 16-month probationary evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]

[REDACTED] He has no formal disciplinary record. He has no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials