



POLICE DEPARTMENT

December 22, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Anthony DiSpigna
Tax Registry No. 941004
72 Precinct
Disciplinary Case No. 2011-5084

Police Officer Rick Carroll
Tax Registry No. 939977
72 Precinct
Disciplinary Case No. 2011-5085

The above-named members of the Department appeared before me on July 9, 2014, charged with the following:

Disciplinary Case No. 2011-5084

1. Said Police Officer Anthony DiSpigna, assigned to 72nd Precinct, while on duty, on or about March 20, 2011, in Kings County, New York, failed to conduct a proper investigation, to wit: having been informed by witnesses of an alleged assault which was captured on video, said Police Officer failed to conduct a canvas of the area with the complainant, failed to review and to safeguard said video evidence, and failed to obtain the pedigree information of the owner of said video evidence. *(As amended)*

P.G. 207-07, Page 1, Paragraphs 1-2 -PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

2. Said Police Officer Anthony DiSpigna, assigned to 72nd Precinct, while on duty, on or about March 20, 2011, in Kings County, New York, having been informed by witnesses of an alleged assault which was captured on video, failed to notify the Precinct Detective Unit of the existence of the video evidence, resulting in the incident being misclassified as misdemeanor assault rather than attempted sexual assault. *(As amended)*

P.G. 207-07, Page 2, Paragraphs 5(f), 7 - PRELIMINARY INVESTIGATION OF
COMPLAINTS (OTHER THAN VICE
RELATED OR NARCOTICS
COMPLAINTS)

Disciplinary Case No. 2011-5085

1. Said Police Officer Rick Carroll, assigned to 72nd Precinct, while on-duty, on or about March 20, 2011, in Kings County, New York, failed to conduct a proper investigation, to wit: having been informed by witnesses of an alleged assault which was captured on video, said Police Officer failed to conduct a canvas of the area with the complainant, failed to review and to safeguard said video evidence, and failed to obtain the pedigree information of the owner of said video evidence. *(As amended)*

P.G. 207-07, Page 1, Paragraphs 1-2 -PRELIMINARY INVESTIGATION OF
COMPLAINTS (OTHER THAN VICE
RELATED OR NARCOTICS
COMPLAINTS)

2. Said Police Officer Rick Carroll, assigned to 72nd Precinct, while on-duty, on or about March 20, 2011, in Kings County, New York, having been informed by witnesses of an alleged assault which was captured on video, failed to notify the Precinct Detective Unit of the existence of said video evidence, resulting in the incident being misclassified as misdemeanor assault rather than as a sex crime. *(As amended)*

P.G. 207-07, Page 2, Paragraphs 5(f), 7 - PRELIMINARY INVESTIGATION OF
COMPLAINTS (OTHER THAN VICE
RELATED OR NARCOTICS
COMPLAINTS)

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, Respondents DiSpigna and Carroll were represented by Michael Martinez, Esq.

Respondents through their counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2011-5084

Respondent DiSpigna is found Not Guilty.

Disciplinary Case No. 2011-5085

Respondent Carroll is found Not Guilty.

INTRODUCTION

The following facts are not in dispute. Respondent Carroll and Respondent DiSpigna were police officers working patrol on March 20, 2011. They received a call of an assault in progress in that a man attacked a woman. This attack was observed by neighbors. When Respondents arrived at the scene, both the attacker and the victim were not at the scene as they looked around. Respondents interviewed a witness who advised them that a man attacked a woman from behind. He tried to grab her, but she pushed him away and they (the attacker and the victim) both ran away. Another person on the street, later identified as [REDACTED] mentioned that he has a surveillance camera at his house and that the incident is probably recorded on video.

Respondents arrived on the scene within minutes of the call. They decided to look for the victim and/or the suspect, so they jumped in the patrol car, with the lights on and drove around looking for the two individuals. They described conducting a grid

search.¹ The search yielded negative results. At some point they spoke with [REDACTED] and told him to hold onto the video. Respondents resumed patrol. A short time later, they received a call to respond to a residence. They interviewed the woman, later identified as Person A and realized she was the woman they were looking for.

Person A told Respondents that she met a guy on the train who followed her once she got off. He wanted to walk with her and when she told him no, he grabbed her from behind. She fell to the ground but was able to push him away and eventually she ran. She had scratches on her hands. Respondents offered her medical attention but she refused. Respondents took a full description of the assailant. Afterwards they called Sergeant Kim for guidance.

Respondents informed Kim that this was a past assault, the same job as the original assault in progress. Kim advised them to leave it open and refer the matter to the Detective Unit. He also instructed them to put in the narrative that the person in the house had a video of the incident. Respondents again resumed patrol. Respondent DiSpigna made arrests for graffiti. He returned to the command to process the arrests and handed in his worksheet which referred the matter of the past assault, and the reference to the video to the detective unit.

What is at issue is whether Respondents Carroll and DiSpigna: 1) failed to conduct a proper investigation, to wit: failed to canvass the area for the complainant, failed to review and safeguard the video and failed to obtain the pedigree information of the owner of the video; and 2) having been informed by witnesses of an alleged assault captured on video, failed to notify the Precinct Detective Unit of the existence of the

¹ A grid search is a deliberate and methodical canvass of the place of occurrence in the immediate and surrounding target area.

video resulting in the incident being misclassified as a misdemeanor assault rather than as a sex crime or an attempted sexual assault.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2011-5084
Specification No. 2 &
Disciplinary Case No. 2011-5085
Specification No. 2

Respondents DiSpigna and Carroll are similarly charged in that while assigned to the 72 Precinct while on duty on or about March 20, 2011 having been informed by witnesses of an alleged assault which was captured on video, failed to notify the Precinct Detective Unit of the existence of the video evidence, resulting in the incident being misclassified as a misdemeanor assault rather than as an attempted sexual assault.

Evidence adduced at trial established that Respondents received a call of a "10-34" assault in progress. Respondents both testified that they had just completed roll call and turned out from the command when they received the call. They immediately got into their patrol car with lights and sirens and arrived at 16 Street in about a minute. They were met by witnesses who stated that a woman was assaulted by a man. She fell to the ground and both (the woman and the man) took off in unknown directions. One neighbor, later identified as [REDACTED] stated that he lived at a particular residence and had the event captured on video. Respondent DiSpigna testified that he advised the neighbor that they would be back, but they had to canvass for the victim and the perpetrator. He also advised the neighbor to secure the video. Respondents then did a grid search. Respondent DiSpigna testified that they patrolled with their turret lights on, going between 15 to 20 miles per hour through a five block radius in a square. They went to

third, fourth, and fifth avenues going slowly, looking between houses under cars and down 16, and 17 streets. The canvass netted negative results.

Shortly after, Respondent DiSpigna received a call on his cell phone that a victim had called the station house and needed to file a complaint. Respondents responded to her residence and realized that it was the complainant in the case they initially responded to. They took her statement. They observed bruises to her knuckles sustained when she fell. They offered her medical treatment. Respondent Carroll testified that he offered medical treatment to the complainant three times and she refused. In addition, Respondents testified that while at the complainant's home, they contacted their sergeant, Kim and informed him of the circumstances and the existence of the video. He instructed them to refer the matter to the Precinct Detective Unit (PDU) and to put in the complaint report that the neighbor has the video.

Respondent DiSpigna testified credibly that he started writing up the complaint report while with the complainant and then finished it in his RMP. He dropped it off within the hour of the incident rather than wait till he returned to the command at the end of his tour. He explained that he thought by listing that the complaint was open and referred to PDU, that someone would investigate it. Respondent DiSpigna offered his scratch copy of the complaint report into evidence (Respondent's Exhibit (RX) C) to corroborate his testimony. It clearly indicates that the complaint is open and the unit it is referred to is PDU. The Department offered no persuasive evidence to indicate that Respondents had any other duty other than to prepare a complaint report and to refer in said complaint that there was a video, where it could be retrieved and that the matter would be forwarded to PDU. The narrative of the Complaint Report (RX C) notes the

existence of the video and the location/address where it can be retrieved. Again, the Assistant Department Advocate offered no persuasive evidence to suggest that Respondents had any other duty other than to mention the existence of the video in the Complaint Report. In fact, Respondents offered testimony that they received instruction/training at the command prior to the incident date that they were not to handle videos and had to sign off that they received this instruction. Thus they were not required to secure the video. Their only requirement as patrol officers was to mention the existence of the video in their paperwork and refer the matter to the detectives in the precinct.

Accordingly, Respondents are found Not Guilty of Specification No. 2.

Disciplinary Case No. 2011-5084
Specification No. 1 &
Disciplinary Case No. 2011-5085
Specification No. 1

Respondents DiSpigna and Carroll are similarly charged in that while assigned to the 72 Precinct while on duty on or about March 20, 2011 they failed to conduct a proper investigation, to wit: having been informed by witnesses of an alleged assault which was captured on video, they failed to conduct a canvass of the area with the complainant, failed to review and to safeguard said video evidence and failed to obtain pedigree information of the owner of said video evidence.

Both Respondent DiSpigna and Respondent Carroll testified credibly before this forum. Respondent Carroll, who was the operator of the patrol car, testified that they were just leaving the station house when they received the assault in progress run and they immediately proceeded to the location. Within minutes of talking to a witness, they

immediately did a detailed grid search for the victim and perpetrator of the crime with negative results. After a follow-up assignment where they were able to later interview the complainant, Respondents inquired of her whether she heard the police vehicle with lights and sirens in the area. She explained that she did not think the police car was for her because it arrived so quickly. Respondent DiSpigna testified that they had done such a detailed grid search and were not able to see anyone on the street on the incident date which was a Sunday night close to midnight. He explained that canvassing at that hour again with the complainant once located, after they had done a detailed search already for the perpetrator and knowing the confines of their precinct at that hour when no one was on the street, would not have been the best course of action.

With respect to reviewing and safeguarding the video evidence, both Respondents testified that they conferred with their supervisor, Kim who was aware of the circumstances and never instructed them to review the video. Review of the video was for the PDU, the investigative unit at their precinct. In addition, both Respondents testified without objection that they had received instruction /training in the command prior to the date of this incident that they were not to handle videos. Respondent DiSpigna testified credibly that he had not been trained on the handling and/or securing of videos and he is a novice when it comes to technology. He explained that he would not want to be held responsible for any damage to a video after he had been instructed at the command level not to handle videos. He further explained that his assignment that night was to do midnight patrol. He mentioned that ideally his command would have four units out on patrol but instead they only had two, and one was making evidence deliveries to the lab which was one of the functions of midnight patrol. Therefore, the

only sector handling radio runs was the Respondents. Doing investigative work was the responsibility of the Precinct Detective Unit.

When Respondent DiSpigna was questioned as to what field investigations meant to him, he stated in essence that it meant interviewing complainants and responding to radio runs. He did not list conducting complaint follow-up investigations. Thus, given the instruction/training both Respondents received in their command not to handle videos, coupled with the instruction received from their supervisor, they were not under a duty to review the video while on patrol nor safeguard the video. They were under a duty to make reference to the video in the Complaint Report that they forwarded to the Precinct Detective Unit to investigate pursuant to supervisory instruction.

With respect to obtaining pedigree information on the owner of the video, Respondents have to make split-second decisions judgment calls while on patrol. They decided to canvass for the victim and the perpetrator of the crime since they arrived at the scene shortly after the call. Upon returning to the scene, they noted the address where the video could be obtained. It must be mentioned that even if Respondents obtained the pedigree information on the owner of the video, this would have been futile information because the complaint was marked "closed" when it was typed into Omniform by the Police Administrative Aide (PAA) and the complaint was never forwarded to the Precinct Detective Unit as Respondents requested.

It must also be noted that Respondents DiSpigna and Carroll did their jobs on the incident date March 20, 2011. Being the only sector in operation at the time, they did what they had to do to return to patrol to be available to answer radio runs, and they did, in fact, respond to other jobs, including the past assault for this case and a graffiti

complaint. The video in this matter was eventually obtained from the address noted in their Complaint Report. The fact that an eventual follow-up investigation was done and determined that the case was misclassified as a misdemeanor assault rather than as a sex crime was not due to the actions of Respondents.

Follow-up to the complaint did not occur as recommended in the scratch copy of their Complaint Report, RX C. The PAA, who improperly typed their Complaint Report, received a Command Discipline for her errors. The lieutenant who signed off on the Omniform without comparing it to the scratch copy of Respondent DiSpigna's Complaint Report received a Command Discipline; and Kim also received a Command Discipline. Respondent Carroll testified before this Court and answered the following hypothetical question. If he classified a case as a misdemeanor assault and it was later changed to a sex crime following an investigation; would he be contacted. Respondent Carroll said that he would never be informed of this change unless he went to the detective unit to inquire about a case or if the case went to trial. Neither of these scenarios was the case in this matter. It must also be noted that the Department's only witness inherited a case file, conducted no interviews of his own and apparently made findings solely on the materials contained in the case file.

Accordingly, Respondents are found Not Guilty of Specification No. 1.

APPROVED

JAN-26 2015
William J. Beaton
WILLIAM J. BEATON
POLICE COMMISSIONER

Respectfully submitted,
Claudia Daniels-DePeyster
Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials