POLICE DEPARTMENT CITY OF NEW YORK

January 7, 2016

Memorandum for: Police Commissioner

Re: Police Officer Vincent Ruiz
Tax Registry No. 942484
Police Service Area 9
Disciplinary Case Nos. 2013-9383 & 2013-10497

Police Officer Dorian Dowe
Tax Registry No. 938395
Police Service Area 5
Disciplinary Case No. 2013-10500

Charges and Specifications:

Disciplinary Case No. 2013-9383

1. Said Police Officer Vincent Ruiz, while off-duty and assigned to Police Service Area 5, on or about January 18, 2012, in the confines of the 19th Precinct, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Ruiz did improperly attempt to persuade Associate Parking Control Supervisor Milton Moran to take back a summons that was validly issued to said Police Officer Ruiz's personal vehicle. (*As amended*)

   P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

2. Said Police Officer Vincent Ruiz, while off-duty and assigned to Police Service Area 5, on or about January 18, 2012, in the confines of the 19th Precinct, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Ruiz was discourteous to Traffic Enforcement Agent Connie Moorer in that said Police Officer engaged in a verbal dispute regarding a validly issued summons and stated in sum or substance, "I know where you work." (*As amended*)

   P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL
   P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL

Disciplinary Case No. 2013-10497

1. On or about May 2, 2013, Police Officer Vincent Ruiz, while on duty and assigned to Housing Borough Manhattan Police Service Area 5, did fail and neglect to conduct a thorough field investigation, to wit, said officer failed to contact Video Interactive Patrol

Enhanced Response (VIPER) despite VIPER cameras being present on the scene. *(As amended)*

P.G. 207-07, Page 1, Paragraph 4 – PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

Disciplinary Case No. 2013-10500

1. Police Officer Dorian Dowe, while on duty and assigned to Housing Borough Manhattan Police Service Area 5, on or about May 2, 2013, did fail and neglect to conduct a thorough field investigation, to wit: said officer failed to contact Video Interactive Patrol Enhanced Response (VIPER) despite VIPER cameras being present on the scene. *(As amended)*

   P.G. 207-07, Page 1, Paragraph 4 – PRELIMINARY INVESTIGATION OF COMPLAINTS (OTHER THAN VICE RELATED OR NARCOTICS COMPLAINTS)

Appearances:
For the Department: Joshua Kleiman, Esq., Department Advocate's Office
For Respondents: Stuart London, Esq., Worth, Longworth & London LLP

Hearing Dates:
September 22 and October 15, 2015

Decision:

Case No. 2013-9383:	Not Guilty of Specification No. 1 Guilty of Specification No. 2
Case Nos. 2013-10497 & -10500:	Not Guilty

Trial Commissioner:
ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before the Court on September 22 and October 15, 2015. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. In Case No. 2013-9383, the Department called Traffic Enforcement Agent Connie Moorer, Associate Parking Control Supervisor Milton Moran and Lieutenant Gerardo Meola as witnesses. In Case Nos. 2013-10497 & -10500, the Department presented the transcribed testimony of Captain Ronald McCall. This was from a prior trial in this matter before a former trial commissioner who left the Department before a decision was rendered. In all of the cases, Respondents testified on their 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, the Court finds Respondent Ruiz Guilty of Specification No. 2 and Not Guilty of Specification No. 1 in Case No. 2013-9383. The Court finds both Respondents Not Guilty in Case Nos. 2013-10497 and 2013-10500.

FINDINGS AND ANALYSIS

Case No. 2013-9383

Respondent Ruiz is charged with being discourteous during an off-duty incident toward an on-duty traffic enforcement agent (TEA) by telling her, in sum and substance, that he knew where she worked. Respondent Ruiz also is charged with wrongfully attempting to persuade the TEA's supervisor to take back a parking summons for double-parking his personal vehicle.

It is undisputed that on January 18, 2012, Respondent Ruiz finished a midnight tour and proceeded to pick up his grandmother, who suffered fro[redacted] and needed constant care.

He was the main family caregiver for his grandmother, but she had a home health aide as well. With his grandmother and her aide in the back seat of his personal vehicle, Respondent Ruiz drove to a pharmacy located on First Avenue between 92nd and 93rd Streets in Manhattan, within the confines of the 19 Precinct. At approximately 1135 hours, he double-parked outside the pharmacy and left his car to get his grandmother's prescription. His grandmother and the aide remained in the back seat of the vehicle.

While Respondent Ruiz was inside the pharmacy, Traffic Enforcement Agent Connie Moorer issued Respondent Ruiz's vehicle a parking summons for double-parking. Respondent Ruiz ran outside and a verbal dispute ensued between him and Moorer. Eventually, Moorer called her supervisor, Associate Parking Control Supervisor Milton Moran to the scene, and Respondent Ruiz summoned on-duty uniformed supervisors from the 19 Precinct, including Lieutenant Gerardo Meola. Respondent Ruiz and Moran spoke at the scene.

What is in dispute is whether Respondent Ruiz stated to Moorer during the dispute, in sum and substance, "I know where you work," and whether this was discourteous (Specification No. 2). It also is disputed whether Respondent wrongfully attempted to have Moran take back the summons (Specification No. 1).

The Court finds that the Department proved Respondent Ruiz made the statement and that it was objectively discourteous. The Court finds, however, that the Department failed to prove Respondent Ruiz attempted to get Moran to dispose of the summons improperly.

Moorer, who was assigned to the Manhattan North Traffic Enforcement Unit, testified that at approximately 1135 hours on January 18, 2012, she noticed a car that was double-parked outside a pharmacy. She did not see anyone in the car, the back of which had tinted windows anyway, and issued a summons (Dept. Ex. 1). As she walked away, she heard a male calling

after her, "Eh, yo." She found this rude and kept walking. When the male called out "traffic agent," however, Moorer turned around and encountered Respondent Ruiz. He pulled open his coat as if to display a shield, so she understood him to be asserting that he was a police officer. Respondent Ruiz was agitated and belligerent, however. He asked Moorer if she had seen a sick form, essentially a letter from the Medical Division indicating that the member has been returned to full duty, on his dashboard. Respondent Ruiz opened the rear door and showed Moorer that his mother was in the back seat. Moorer assured Respondent Ruiz that had she known he was a police officer, she would not have issued him the summons (Tr. 25-29, 31-34, 46, 54-55, 57-58, 156-57).

Moorer stated that Respondent Ruiz then told her, "I know you guys are out of . . . 106th Street." She testified that Respondent Ruiz did not respond when she asked him if that was a threat, although at the first trial she said he denied it was a threat. Manhattan North Traffic Enforcement was in fact headquartered at 106th Street. Moorer testified at the second trial that Respondent Ruiz refused to give her his shield number and told her, "Being that you want to be smart, get me your supervisor" (Tr. 27, 29, 34, 37-39, 45-46, 51).

Moran arrived and observed Respondent Ruiz and Moorer. Moran first spoke with Moorer, who told him that Respondent Ruiz had threatened her by mentioning where she worked. Moran told her to wait in her vehicle and that he would handle it. Respondent Ruiz told Moran that he had a sick form, but Moran said that it was faded and he could hardly see it. Moran had to cup his hands on the tinted windows to see an elderly woman sitting there. Moran claimed that "most" police officers get illegally tinted windows because they can get away with it (Tr. 27-30, 34-35, 60-65, 67-72).

Moran testified that Respondent Ruiz was upset, but respectful. He told Moran that he only had gone into the pharmacy to get medicine for his sick mother. Moran indicated that Respondent Ruiz asked him, "You going to take care of this summons?" Moran refused, as the summons was issued validly. Respondent Ruiz was in fact double-parked, in a bike lane, when there was a space available. Moran told him, however, that he easily could get the summons dismissed in court by showing the judge a receipt from the pharmacy. Respondent Ruiz nevertheless wanted to take it further, to a higher-ranking supervisor. Respondent Ruiz called for uniformed supervisors, and several from the 19 Precinct, including Meola, arrived. Moran told Meola that Respondent Ruiz asked for the ticket to be taken back, but did not tell Meola that Moorer felt threatened by him. Meola said that all concerned would need to proceed to the stationhouse for further investigation (Tr. 63-67, 72-73).

Meola testified that he spoke first to Respondent Ruiz, who was upset but calm. Respondent told him that he identified himself to Moorer as an off-duty member of the service "and then he continued to speak." Moorer became belligerent, and Respondent Ruiz asked for her supervisor "because of the way she was acting." Meola saw the sick form in Respondent Ruiz's dashboard area, and his grandmother and a health aide sitting in the car (Tr. 75-81, 84).

Meola then talked to Moorer, who essentially told him what she testified to at trial. Meola described her as upset but respectful. Meola indicated that he went back to Respondent Ruiz and asked him about Moorer's claims, but he did not answer. Meola also spoke to Moran, but did not recall the details of the conversation. This included whether Respondent Ruiz asked Moran to fix the summons. If Moran had said this, "it would have stayed in [Meola's] mind" because it would have been an allegation of corruption of the type then brewing in the Bronx ticket-fixing scandal. Meola also testified, however, that because Moran was not on the scene

"when the incident occurred," anything he said would be secondhand. Thus Meola "really didn't take it into consideration" (Tr. 77-79, 81-82, 84).

Respondent Ruiz testified that he was the primary caregiver for his grandmother, who had [redacted] and needed to go to the hospital on the date in question. She also had a home health aide. After working on the first platoon, Respondent Ruiz drove to the pharmacy to get her pain medication in his Ford Explorer, which had factory-tinted windows (cf. Vehicle & Traffic Law § 375 [12-a][b], allowing rear-window tints in SUVs). He claimed that one could see in the windows from feet away, without cupping one's hands. He admitted, though, that he was double-parked and it was summonsable. Within only minutes after entering the pharmacy, the aide called him and said that he was getting a summons, even though the aide said she told the traffic agent the driver was filling a prescription (Tr. 92-94, 115, 119, 125, 150-51, 154, 158, 160, 165).

Respondent Ruiz admitted that he ran out and saw Moorer walking away. He contended that he said, "Miss, miss, thank you. Thank you." He meant this sincerely, he claimed, as he thought that Moorer had listened to the aide and used discretion not to issue the ticket. Moorer, instead, told him, "Thank me for what? You already got the summons." Respondent Ruiz told Moorer that he was in the pharmacy to get a prescription for his grandmother, but she countered that no one told him to double-park. He pointed out his grandmother and her aide, and repeated his defense, but Moorer "was being argumentative," telling him that he essentially gave himself the ticket, i.e., by choosing to park illegally. According to Respondent, Moorer "had an attitude problem" and "wasn't very professional" (Tr. 94-96, 99-100, 114-17, 125, 132, 151).

Respondent Ruiz admitted that Moorer assured him she would not have issued the ticket had she seen a parking plaque in the windshield, but he countered that the aide had told her he

was an officer. Respondent also testified that there was Department paperwork on the dashboard, like the sick form. Moorer said that this did not prove he was a member of the service (Tr. 97-98).

Respondent Ruiz admitted that he was upset about getting the summons but denied being discourteous to Moorer. He was tired from working the tour before and had been "running like crazy" that morning trying to take care of his sick grandmother. He had not even gone home yet. He was having a bad day and just wanted Moorer to have empathy for his situation, even just to say that she was sorry but there was nothing she could do. Respondent was a former TEA himself and knew that Moorer could not take back the summons (Tr. 100, 107, 118-21, 132, 152-53).

Respondent Ruiz identified himself to Moorer as a police officer by showing his shield and ID card. After three to five minutes of speaking to Moorer, he asked to speak to her supervisor to let him know how unprofessionally she was acting. Moorer asked if he was threatening her. He denied that it was a threat, but also refused to give her his shield number until the supervisor arrived. Respondent Ruiz denied telling Moorer that he knew she turned out of 106th Street, although he admitted he knew that was where the command office was located. Respondent Ruiz denied that he asked for the supervisor in order to void the ticket. When Moran arrived, Respondent Ruiz said, he did not ask him to take back the ticket. Respondent Ruiz claimed that Moran "[a]bsolutely" was lying when he testified to this, even though he admitted Moran listened to what he had to say and he had no problem with Moran's response. Respondent Ruiz could not think of anything he told Moran that could have been misconstrued, although he denied that Moran told him how to beat the summons in court. Respondent Ruiz

also called for uniformed supervisors from the 19 Precinct (Tr. 96-104, 122-25, 130-33, 151, 154-55, 166).

The first issue to be determined in this case is whether or not Respondent Ruiz was discourteous to Moorer by telling her that he knew where she worked. The tribunal finds that the Department proved by a preponderance of the credible evidence that Respondent engaged in the alleged misconduct.

Resolution of this matter rests in large part on a determination of witness credibility. In analyzing credibility, this tribunal may consider such factors as consistency of testimony, supporting or corroborating evidence, bias, and the degree to which an account comports with common sense and human experience.

The tribunal credits Moorer on the issue of whether Respondent Ruiz made the remark in question. It was undisputed that this was a tense incident with recriminations from both sides. Moorer, however, impressed the Court with her testimony, as it was free from any sign that she sought to embellish the incident.

Respondent Ruiz's testimony, on the other hand, was objectively incredible. He admitted that he was illegally parked. At any point in this encounter, including before engaging Moorer, Respondent Ruiz could have walked away. His reasons for initially running after her – to thank her because he thought she had declined to give him the ticket – was not worthy of belief. Similarly, Respondent Ruiz continued to tell Moorer that he was only inside the pharmacy for a brief time to pick up his mother's medication. His supposed reason for doing so was to get her to have empathy for his situation. But to what end? Respondent Ruiz knew that Moorer could not take back the summons once it had been written. The only reason for him to keep talking to her that makes sense is one borne of a discourteous motive.

It is in that vein that the alleged remark makes sense. At the time of the incident, Respondent Ruiz was assigned to Police Service Area 5, located in East Harlem (Tr. 90). As he conceded, he knew that Manhattan North Traffic Enforcement worked out of 106th Street. Meola, the 19 Precinct supervisor, testified that Moorer told him that Respondent Ruiz had made the remark about knowing where she worked. But none of the evidence suggested that Moorer had any way of knowing at that time that Respondent Ruiz was assigned to the same area where she worked. In other words, to conclude that Moorer was fabricating the claim, the tribunal would have to conclude also that she correctly guessed Respondent Ruiz would, in fact, know where she worked. It is a more reasonable conclusion that Respondent Ruiz made the comment because he knew where she worked and was angry that she gave him the summons.

The tribunal also notes that Respondent admitted he was having a bad day. Meola, whom the Court credits as a disinterested, neutral supervisor, testified credibly that Respondent did not answer when Meola asked him about Moorer's claims.

In sum, the tribunal finds that it is more likely than not that Respondent Ruiz made the charged comment. The tribunal further finds that the remark was wrongfully made, contrary to the good order, efficiency and discipline of the Department, coming as it did from an off-duty member of the Department to an on-duty one, concerning a subject of Department enforcement. Therefore Respondent is found Guilty of Specification No. 2.

The second issue to be determined in this case is whether or not Respondent Ruiz wrongfully attempted to have Moran take back the summons. The tribunal finds, after viewing the evidence in a light most favorable to the Department, that the Department failed to establish Respondent Ruiz wrongfully attempted to have Moran do anything.

The specification alleges that Respondent Ruiz tried to get Moran to "take back" the summons. It does not, by itself, allege any corrupt act. The evidence at trial revealed that a supervisor had the authority to take back a summons (Tr. 119). Moran's testimony indicated that Respondent Ruiz was seeking exactly that, the licit exercise of supervisory discretion. Moran refused to do so, however, because the summons was validly written. All Respondent Ruiz had to do was go to court and explain the situation. Respondent Ruiz, according to Moran, wanted to take it to a higher supervisor. This is inconsistent with a conclusion that Respondent Ruiz was trying to engage in corruption.

The Bronx ticket-fixing cases revealed that to "take care of" of a summons often meant to prevent its adjudication corruptly, by failing to put it in the box, removing it from the box or getting the issuing officer to fail to testify accurately. See, e.g., *Case No. 2011-5518*, p. 19 (Apr. 14, 2014). There was insufficient proof here, however, that Moran meant Respondent Ruiz was using the term in that manner. Rather, the entire context of the encounter failed to establish that Respondent Ruiz wanted to do anything more than have a supervisor resolve the matter to his satisfaction. Because this was within the supervisor's authority, there was nothing wrong with Respondent Ruiz asking Moran to do so. In fact, Meola's failure to recall Moran telling him of Respondent Ruiz's request simply could have been because Moran did not actually allege an attempt at corruption. As such, Respondent Ruiz is found Not Guilty of Specification No. 1.

Specification No. 1

Respondents are charged with neglecting to conduct a thorough field investigation by failing to contact VIPER officers, despite VIPER cameras being present on the scene. The facts were for the most part undisputed. On May 2, 2013, a member assigned to PSA 5 VIPER observed two individuals on the rooftop landing of a public housing building located at 10 Paladino Avenue in Manhattan. The rooftop landing, the enclosed area on the roof itself, was off-limits to residents of the building, and presence there without permission or authority was trespassory. While on the rooftop landing, the two individuals engaged in sexual conduct. VIPER contacted the PSA 5 desk officer.

At trial, Respondents indicated that a sergeant asked them very casually to check out the report that "[s]upposedly" an individual was performing oral sex on a male on the rooftop landing of 10 Paladino Avenue. The sergeant did not say how he got this information and did not mention VIPER. Respondents proceeded to the building, which they knew had VIPER cameras on the rooftop landing. They headed toward the rooftop landing and saw a male and female descending the stairs from the landing. The individuals were clothed and not engaged in any sex act, and their presence on the staircase was not trespassory. The female indicated that she was a resident of the building and that the male was her parent-disliked boyfriend. Respondents escorted the couple to the apartment, where her father confirmed this information and said that the male was not welcome. Respondents escorted the male out of the building and completed a field report on the incident (Tr. 108-12, 114, 140-41, 145-50, 158-59, 169-72, 179-80).

Respondents did not contact VIPER to further investigate the incident. The VIPER officers, however, were unsatisfied that an arrest was not made as the fruit of their efforts, and complained to supervisors. Respondents were issued command disciplines but declined to accept them.

In Respondents' view, they were not required to contact VIPER. Respondent Ruiz claimed that they did not receive a "report," only that they were "informed by" a sergeant of the alleged public lewdness. He did not know where the sergeant got that information from and it was unconfirmed. Had it been a written report, he would have checked the VIPER cameras. In Respondent Dowe's view, the "supposedly" was key. Had the incident been observed by VIPER, it would have been definite and he would have known to check the cameras. He was not told that it had been viewed by VIPER and there was nothing definite about it (Tr. 114, 141-46, 161-63, 173, 176-77, 182-84).

Captain Ronald McCall's testimony from the prior trial was admitted as Department Exhibit 4 in lieu of having him testify again. McCall testified that he was made aware of the incident involving VIPER and Respondents. McCall asked Respondents why they did not contact VIPER "to just confirm what had happened." When asked at trial why he thought they should have called VIPER, McCall answered, "[I]f they went, all they had to do was call Viper to verify if there were people on the roof. That would have been . . . all the evidence they would have needed to say somebody was trespassing up there." McCall agreed, however, that "[i]t's not a part of the procedure" to call VIPER as part of a complete investigation after responding to a Housing Authority building based on a reported crime, "it's just logical that . . . if you have evidence that somebody went up there and you have video to show that they were there, you might want to look into that." McCall would have done so if he had been in Respondents' shoes,

and considered it part of a full field investigation, yet averred that they did not commit misconduct. It was the commanding officer that ordered command disciplines be issued (Dept. Ex. 4, tr. pp. 166, 168-71, 174-77, 181-91).

The VIPER video (Dept. Ex. 3) depicts a male and a female engaging in sexual conduct, apparently on the steps leading up to the rooftop landing, and on the landing itself. At the moment the officers turn the corner, the individuals are on the staircase itself and not the landing. Their clothes are on, although the male's pants may be unfastened.

At issue is the Department's contention in its opening statement: whether, any time a crime is reported in the common areas of a Housing building, and VIPER cameras are present, responding officers must, as part of the thorough field investigation prescribed by Patrol Guide § 207-07 (4), verify through VIPER whether anything relevant was caught on video (Tr. 12).

The tribunal credits McCall's opinion on this. The best practice may be to consult with VIPER, but failure to do so does not constitute a violation of the Patrol Guide. In fact, the video here does not even depict much of the landing – it depicts the staircase leading up to it and that is not where the alleged public lewdness supposedly was occurring. If, according to the Department, Respondents' commanding officer disagreed with McCall (Tr. 205), it was incumbent upon the Department to present that individual as a witness to explain why.

The Department conceded for the purposes of trial that it was unclear whether Respondents were told the incident was captured by VIPER. Respondent Dowe's testimony supported their assertion that they could not necessarily know it was a VIPER-initiated complaint. In his experience, if it was initiated by VIPER, the responding officers would have been told that VIPER saw it. The fact that the report was of a "supposedly" character informed Respondent Dowe that it was not VIPER and thus he had no need to check with them. Thus,

even if the Department's bright-line rule were correct, the manner in which Respondents were told of the incident excluded VIPER's involvement. Therefore they are found Not Guilty.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent Ruiz's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). Respondent Ruiz was appointed to the Department as a Police Officer on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended a total penalty of 20 vacation days for Respondent Ruiz on all three specifications. It recommended a penalty of 5 days for Respondent Dowe, so it can be said that the Department's recommendation on the traffic summons case is 15 days.

The cases cited by the Department are distinguishable. For example, *Case No. 80538/04* (June 13, 2005), in which 20 vacation days were forfeited, involved physical violence against a parking agent, and the member had a prior disciplinary record. *Case No. 79694/04* (Dec. 16, 2005) similarly involved a member with a prior record, as well as profanity. The incident under review apparently led to a suspension, a factor not present in our case.

Respondent was not charged with threatening Moorer, only with making a discourteous statement toward her. Moreover, he has a positive work history. Accordingly, the Court recommends that Respondent forfeit 7 vacation days as a penalty.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

MAY 23 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VINCENT RUIZ
TAX REGISTRY NO. 942484
DISCIPLINARY CASE NOS. 2013-9383 & 2013-10497

Respondent was appointed to the Department as a Police Officer on July 10, 2006. He previously had been appointed as a Traffic Enforcement Agent on October 1, 2003. His last three annual evaluations were 3.0 ratings of "Competent" in 2014 and 2013, and a 3.5 rating of "Highly Competent/Competent" in 2012. He has three medals for Excellent Police Duty.

Respondent has no prior formal disciplinary history.

[redacted]

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials