



POLICE DEPARTMENT

April 3, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Anthony Rumph
Tax Registry No. 913189
Narcotics Borough Bronx
Disciplinary Case No. 2011-6532

The above-named member of the Department appeared before me on January 15, 2013, charged with the following:

1. Said Detective Anthony Rumph, assigned to Narcotics Borough Bronx, on or about September 9, 2011, at a location known to this Department, in [REDACTED] County, did fail and neglect to properly safeguard his Glock 9mm, Serial [REDACTED], service firearm, as required.

P.G. 204-08, Page 2, Paragraph 7 FIREARMS-GENERAL REGULATIONS

2. Said Detective Anthony Rumph, assigned to Narcotics Borough Bronx, on or about September 9, 2011, at a location known to this Department, in [REDACTED] County, did improperly perform enforcement duties without being in possession of his 9mm, Serial [REDACTED], service firearm, as required.

P.G. 204-08, Page 1, Paragraph 1 – FIREARMS-GENERAL REGULATIONS

The Department was represented by Christine M. Maloney, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

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 record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a 20-year member of the Department, is currently assigned to the Narcotics Borough Bronx. Respondent lives alone in a single-family residence secured with locked doors and an alarm system. Respondent's service weapon, a Glock 9-millimeter, is usually kept in a safe on the floor inside a closet in his residence. Respondent began safeguarding his firearm in the safe after two prior incidents of burglary of his residence, in which his firearms were taken. In the first incident, which occurred in September 2004, the firearm was subsequently recovered. In the second incident, which occurred in January 2005, Respondent was not home and returned to find his rear door ajar and snow inside his home. Respondent's revolver, which he obtained upon entering the Department, was taken. Respondent filed a Lost and Stolen Property report at his local police department, but the revolver was never recovered. Respondent received a disciplinary penalty of the loss of 15 vacation days based on both the first and second incidents. Respondent did not have any incidents since 2005 up to the time of September 2011.

On September 9, 2011, Respondent removed his firearm from his safe and got dressed to go to work. Before Respondent left, he used the bathroom. Upon leaving, Respondent secured his residence by setting an alarm. Respondent did not have his firearm on his person after leaving, and left his firearm in the bathroom. Respondent did however carry his leather holster on his hip on the outside of his belt. Respondent's shirt

was over the holster. Respondent claims that he did not realize at the time that he left the bathroom to leave to go to work that he did not have his firearm in the holster.

Respondent proceeded to work at that point in time.

Respondent started his tour at 3:27 p.m. at his command for a period of time doing administrative duties. At approximately 5:20 p.m., Respondent left the command and prepared to go out to conduct an observation enforcement operation. Respondent was assigned to the prisoner van for the day with his partner Detective Anthony Mattessi.

Upon reentering the vehicle after exiting to help another member of the field team, Respondent realized that he did not have his firearm on his person. Respondent believed that he dropped his firearm at the scene of the last incident, and still believed that he had taken his firearm with him when he left his residence that day. Immediately after discovering that he did not have his firearm, Respondent searched the vehicle that he was in and notified Sergeant Lynch five minutes later. Lynch subsequently started a mobilization procedure.

Respondent called Detective Laura Stuart, a member of the service who lived close to him and was off-duty at the time, and gave her the passcode to enter his home to check if the firearm was left there. After Stuart entered the residence, she informed Respondent that she did not see the firearm. Respondent later spoke to Stuart again, inquiring her to take another look. Respondent was then informed by Stuart that when she went upstairs in his bedroom she saw the firearm on the vanity inside the bathroom. Respondent then immediately notified Lynch to notify his superiors to stop the search.

Respondent has previously received formal discipline from the Department in 1994 for failing to make a court appearance, and lost six vacation days. Other than

failing to make a court notification and the 15 vacation days forfeited in 2005 after the burglaries of his residence, Respondent has not received any other formal discipline by the Department. Respondent has never left his firearm behind in his residence before, and has never lost his firearm.

On cross-examination, Respondent testified that there were two other people in the prisoner van besides him and his partner Mattessi. Respondent exited the vehicle to help another member of the field team to secure a prisoner who was on the ground after a brief foot pursuit out of the [REDACTED] Housing Development. This prisoner was eventually placed in the prisoner van by Respondent. There was a crowd at that time at the [REDACTED] Housing Development, and additional units had to be requested to deal with the crowd. The field team continued with their enforcement operation until 9:20 p.m. at which point Respondent, along with the whole field team and additional units that Lynch called for went back to the [REDACTED] Houses to look for his firearm. The search for the firearm lasted for a little over one hour.

Respondent also testified that in the first burglary of his residence in September 2004, someone entered Respondent's residence while he was asleep and took his firearm. The firearm was located on the night stand in his bedroom.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to failing to properly safeguard his service firearm. He has also pleaded Guilty to improperly performing enforcement duties without being in possession of his service firearm. The Assistant Department Advocate (Advocate) asked for a penalty of the forfeiture of 25 vacation days and one year dismissal probation. The Advocate based this penalty recommendation on the fact that Respondent was six hours into his tour and four hours in the field doing enforcement activity before he realized that he was not in possession of his service firearm.

In addition, there were two, concurrent searches going on for Respondent's firearm, one at his home with an off-duty member of the service searching his residence for the firearm, and one on the street at the various locations where Respondent's team had worked that day. The Advocate argued that this demonstrated that Respondent did not exercise the utmost care in securing his firearm, particularly since he had been victimized twice in his residence where his firearm was stolen on two separate occasions from his home and which he received a penalty from the Department in the past in the form of the forfeiture of 15 vacation days to resolve the two matters. Eventually Respondent's service firearm in this instance was recovered on the bathroom sink in his residence, and clearly not secured.

Moreover, on the incident date, Respondent was assigned to the prisoner van. Had any event erupted involving the prisoners, Respondent was not armed at the time. The Advocate noted that it was for the above-referenced reasons that a penalty recommendation which includes dismissal probation was added. The Advocate further noted that the prevailing case law precedence, including cases she cited, do not have the factors noted in Respondent's case where dismissal probation was recommended.

The Advocate cited as precedence, Disciplinary Case No. 2011 3451 (June 29, 2011) where a 23 and-a-half-year detective with two prior disciplinary matters negotiated a penalty of 30 vacation days for failure to safeguard his loaded service and off-duty firearm and failure to notify the Operations Unit of an off-duty unusual police occurrence. The detective did not secure his service weapon resulting in his wife obtaining possession of the firearm and discharging one round in their residence. He also left his off duty firearm unsecured inside a basement drop-ceiling in their residence. In Disciplinary Case No. 2011-3571 (August 8, 2011) an 18-year detective with one prior disciplinary case involving a failure to safeguard firearm charge, negotiated a penalty of 25 vacation days for failure to safeguard his off-duty firearm. In that matter, the detective left his firearm inside the restroom of a mall that he was shopping in.

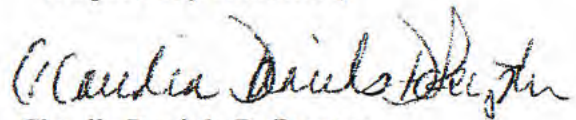
The Advocate also cited Disciplinary Case No. 2010-2394 (April 18, 2011). In that matter, a 15 and a-half-year police officer with no prior disciplinary record negotiated a penalty of 30 days time already served on suspension for failure to safeguard his firearm, leaving the firearm unattended in his vehicle and wrongfully carrying his firearm unsecured in a holster. The officer had his firearm holstered insecurely in his waistband, which was uncomfortable for him so he decided to leave his firearm unattended in the middle console of his vehicle and could not remember if he locked his vehicle. The officer did not discover the loss for several days. He received a severe penalty because he had previously lost several items of Department property.

For the above referenced reasons, it is recommended that Respondent serve a period of monitoring to ensure that this failure to safeguard his firearm will not be repeated. It is serious misconduct to work for several hours, including assignment to the

prisoner van, before realizing that he is without his service weapon. This tribunal has held that a period of dismissal probation "gives Respondent the benefit of another chance to show that he can be an asset to the Department while affording the agency the prerogative of ending his employment if he does not." (See Disciplinary Case No. 75596/00 and 75441/00).

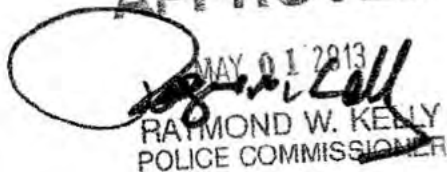
Accordingly, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent forfeit 25 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED



MAY 01 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

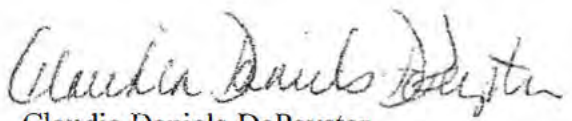
From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ANTHONY RUMPH
TAX REGISTRY NO. 913189
DISCIPLINARY CASE NO. 2011-6532

In 2011, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluation. In 2010 and 2009, he received a rating of 4.5 "Above Highly Competent." Respondent has received one Meritorious Police Duty Medal in his career to date and has made 1155 arrests.



In 1994, Respondent received Charges and Specifications for failing to perform a court tour. He forfeited six vacation days. In 2004 and 2006, Respondent received Charges and Specifications for failing to safeguard his firearm. On both occasions, Respondent placed his weapon on his nightstand and awoke to find that he was a victim of a burglary. On March 20, 2007 following a Department trial, Respondent was found Guilty and forfeited 15 vacation days.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials