



POLICE DEPARTMENT

September 8, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Julio Silva
Tax Registry 923180
Housing Borough Bronx Queens
Disciplinary Case No. 85602/09

The above-named member of the Department appeared before the Court on March 30 and June 1, 2010, charged with the following:¹

1. Said Police Officer Julio Silva, assigned to Manhattan Traffic Task Force, while on duty, on or about July 21, 2009, at approximately 1445 hours, while inside of Manhattan Traffic Task Force, was discourteous to New York City Police Sergeant James Carini, Tax No. 917384, in that said Police Officer Silva threw up his hands and yelled at Sergeant Carini stating, "I'm not going to talk to you, I have had enough, I'm leaving." (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT –
GENERAL REGULATIONS

2. Said Police Officer Julio Silva, assigned to Manhattan Traffic Task Force, while on duty, on or about July 21, 2009, at approximately 1445 hours, having been directed by New York City Sergeant James Carini, Tax No. 917384, to stay quiet and stand by, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS –
GENERAL REGULATIONS

3. Said Police Officer Julio Silva, assigned to Manhattan Traffic Task Force, while on duty, on or about July 21, 2009, at approximately 1445 hours, while inside of Manhattan Traffic Task Force, was discourteous to New York City Police Sergeant James Carini, Tax No. 917384, in that said Police Officer Silva violently began to point his finger at Sergeant Carini stating, "Don't tell me what to do, you are not my father, I'm not talking to you."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT –
GENERAL REGULATIONS

¹ The record was held open until June 4, 2010 for the submission of evidence.

The Department was represented by Amy Avila, Esq , Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq

The Respondent, through his 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

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Thomas McNamara, Sergeant James Carini, and Sergeant Michael Vespa as witnesses.

Sergeant Thomas McNamara

McNamara has been assigned to the Manhattan Traffic Task Force (MTTF) for three years. On July 21, 2009, he was working as patrol supervisor, and the Respondent was assigned to a fixed post on Canal and West Streets, directing the heavy flow of traffic that leads into the Holland Tunnel. According to McNamara, when he informed the Respondent that his assistance would be needed at a surge deployment near the post, the Respondent replied in a tone that was a little loud and argumentative that he was not

scooter-qualified² McNamara pointed out to the Respondent that he had not asked anything about scooter qualification, and McNamara proceeded to bang a book against his head in frustration. He did not recall the Respondent saying anything further about his assignment. Afterwards, while doing paperwork at the desk, he heard the Respondent having a heated argument with Sergeant Carini. He saw the Respondent, while pointing at Carini, state, "You are not my father, you can't speak to me like that." McNamara again described the Respondent's tone as loud and argumentative. In contrast, according to McNamara, Carini was speaking in a normal tone, and he (McNamara) could not hear what Carini was saying. McNamara did not know how the argument started.

On cross-examination, McNamara testified that both he and Carini were standing behind the desk during his (McNamara's) exchange with the Respondent. McNamara was standing approximately eight feet from the command's exit door, and Carini was eight to 12 feet further away from the door. The exchange took place after roll call ended, and all of the officers were leaving to start their assignments. There was a lot of commotion, and it was a little loud. If Carini wanted to tell McNamara something, he would have needed to raise his voice a little in order to be heard. McNamara never before had problems with the Respondent.

McNamara stated that officers assigned to the post at Canal and West Streets are normally given a Department scooter or car to help block drivers from making illegal turns. The scooter or car also provides the officers with protection from wayward vehicles. For these reasons, when a car is available, it is given to the officer assigned to that post. McNamara could not recall an officer working the post without a vehicle. An

² McNamara explained, "A surge deployment consists of many police vehicles from all over the city. They respond to this one location at which time they all respond to sensitive locations. It's a drill to locations all throughout the city."

officer's assignment comes from the roll call, something for which McNamara is not responsible

Carini's exchange with the Respondent took place where Carini was standing. Carini was behind the desk, and the Respondent was in front of it. McNamara did not see the Respondent walk toward Carini's location, nor did he hear Carini engage the Respondent in any way. The first thing he heard was the Respondent's comment about Carini not being his father. At no point before or after hearing that comment did McNamara observe the Respondent exit the command. Although he did not see or hear anything happen outside, he later heard from others that an incident had taken place outside of the building.

McNamara testified that he does not curse or use harsh language when dealing with subordinates. Sergeants are not supposed to curse at police officers, and he has not observed Carini speak to officers in that manner or do anything inappropriate.

Sergeant James Carini

Carini, a 14-year member of the Department, has been assigned to MTTF for three years. He testified that on July 21, 2009, he observed the Respondent having an altercation with McNamara. He described the altercation as a heated exchange of words concerning scooter qualification or keys to a Department car. At the time, Carini was 10 to 15 feet away from the Respondent and McNamara. Carini stated that while the Respondent was not screaming or yelling, his tone of voice was uncooperative. McNamara, meanwhile, seemed frustrated. Carini motioned for the Respondent to come over to where he was standing, and the Respondent complied. The Respondent was

assigned that day to the post at Canal and West Streets, an assignment for which Carini was not responsible

Carini told the Respondent that he would give him a ride to post and that he would also give him a ride back to post later in the day after the surge deployment. In response, the Respondent pointed out to Carini that during his eight years in the command everybody who had been assigned to the post at Canal and West Streets was always given a Department vehicle. Carini described the Respondent's volume as, "an elevated tone, but not yelling." He described the Respondent's demeanor as uncooperative. When the Respondent stated, "I am not going to be the first one to do it without [a vehicle]," Carini replied, "Really? Says who?" At that point, according to Carini, the Respondent went into a tirade. The Respondent threw his hands up and loudly screamed, "You know, I don't need to talk to you, I am done, I am leaving." Then the Respondent turned around and started to walk away while saying, "I don't need to listen to you, I am leaving now." When Carini informed the Respondent that he was not done talking to him, the Respondent said, "I am done," and walked out of the building. A short time later Carini followed, told the Respondent again that he was not done talking to him, and also told the Respondent to come back inside. The Respondent did not comply. Instead, the Respondent pointed a finger at Carini and screamed, "You are not my father, don't tell me what to do, I don't need to listen to you." Only after Carini repeated three or four times that he was not done talking to the Respondent and that the Respondent should go back inside the building did the Respondent actually comply with this order.

Once inside the building, Carini and the Respondent walked to the desk area. Carini told the Respondent, "Stay here and keep your mouth closed I don't want to hear another word " According to Carini, the Respondent did not comply with this order. Instead, the Respondent dropped his bag, pushed out his chest at Carini, pointed his finger in a violent and threatening manner, and screamed at the top of his lungs, "You are not my father, you don't tell me what to do, don't you talk to me like that, I don't have to listen to you " Carini had to tell the Respondent several times to close his mouth and shut up before the Respondent complied with the order. The Respondent then walked to the muster room, but he was compliant when Carini ordered him to return to the desk and bring his Activity Log. After noting the incident in the Respondent's Activity Log, Carini told him that disciplinary action might be taken. At that point, the Respondent started to yell again. Both Carini and a Sergeant Vespa instructed him to be quiet. The Respondent was compliant but, as he walked away from the desk, he turned around halfway and glared at Carini while nodding his head up and down. Carini felt that the Respondent's gesture was intended to intimidate him. After Carini informed his executive officer about the incident, the Respondent was suspended.

On cross-examination, Carini testified that the encounter with the Respondent never turned physical. The entire incident lasted approximately ten minutes. Carini does not believe he did anything wrong. Although he does not recall using any obscene language, he may have at one point told the Respondent, "I don't give a shit " He did not recall ever telling the Respondent to "get the fuck back in here " He stated that his tone was calm when he called the Respondent to the desk the first time. Although the

command can get loud sometimes, Carini did not have to scream for the Respondent to hear him

Carini reiterated that the Respondent claimed that he (the Respondent) would not go to post without a vehicle. During the Respondent's exchange with McNamara, though, Carini never heard the Respondent make such a claim. Nothing in the Patrol Guide dictates that the Respondent needed a vehicle at his post. Carini testified that based on his experience, however, officers assigned to that post are given scooters if they are scooter-qualified.

There was a time in February 2009 that Carini supervised the Respondent and two other officers on a post. Carini was disappointed with the interaction that he had with the officers that day, but he does not recall being upset with them for not writing enough summonses. Carini testified that he has nothing against the Respondent, he does not recall ever telling anybody that he did not like the Respondent and he was not looking for an excuse to start a confrontation with him.

When the Respondent left the building, Carini did not know where he was going. Because the Respondent was loudly screaming as he walked away, Carini raised his voice in order to be heard. Although Carini felt it was disrespectful for the Respondent to walk away from him like that, at no point did he tell the Respondent, "Get the fuck back in here. I am not done talking to you." Carini did not recall the Respondent ever saying anything about speaking with a lieutenant about the situation. Carini stated that after he memorialized the incident in the Respondent's Activity Log and informed him that disciplinary action might be taken, the Respondent was supposed to stand by to see what would happen next. When the Respondent walked away this

time, he did not walk toward the exit door but instead walked toward the opposite wall

Carini did not tell the Respondent to wait in a specific location

On re-direct examination, Carini testified that there were no vehicles available for the Respondent's use on the day of the incident. When asked if it is typical for an officer assigned to that post to have a vehicle, Carini replied, "No, it's not typical. It's never a given. If [a vehicle] is available, it's able to be given, then it is." The Respondent never told Carini that he felt unsafe going to his post.

Sergeant Michael Vespa

Vespa, a 19-year member of the Department currently assigned to the Chief of Transportation Investigations Unit, was formerly assigned to MTTF. While at the MTTF desk on July 21, 2009, he observed a loud and boisterous exchange between the Respondent and Carini. He explained that the Respondent pointed his finger at Carini and angrily yelled, "You are not my father, you don't tell me what to do." Vespa directed the Respondent to step away from the desk area, and the Respondent complied. The Respondent walked to the roll call area, where he proceeded to glare at Carini. Because the glare caused Vespa to believe the situation would escalate, he instructed the Respondent to go to post. Carini decided, however, that the Respondent should not take his post and instead wait in the muster room until a supervisor was consulted. According to Vespa, throughout the incident Carini remained calm while the Respondent was very angry. At no point did Vespa hear Carini use profanity.

On cross-examination, Vespa testified that he did not recall seeing the Respondent speak with McNamara, interact with Carini earlier in the tour or do anything

inappropriate prior to the incident at the desk. During that period, Vespa was busy making command log entries and the telephone was ringing off the hook. As far as he knows, the Respondent left the building at some point to go to post. He saw the Respondent come back into the building, following behind Carini. Something that bothered the Respondent had clearly taken place. Vespa did not recall hearing the Respondent use profanity. Nor did he recall Carini taking the Respondent's Activity Log.

The Respondent's Case

The Respondent called Police Officer Christopher Fagone, Police Officer Edward Paynter, Police Officer Susan Cassidy and Police Officer James Palmer as witnesses. In addition, the Official Department Interview of Police Officer Kyle Trisarnsri was entered into evidence and the Respondent testified in his own behalf.

Police Officer Christopher Fagone

Fagone, a 17-year member of the Department, has been assigned to MTTF for 14 or 15 years. He testified that he went outside after roll call on July 21, 2009. At one point he observed the Respondent come outside and look through his patrol bag. Fagone believed that the Respondent was on his way to post. Suddenly, Carini came outside, yelling at the Respondent, "I am not done speaking with you, come back inside the building now." The Respondent replied, "I am not your child, don't speak to me like that." After Carini repeated that he wanted the Respondent to go back inside the building, the Respondent complied. According to Fagone, the Respondent spoke to

Carini in a normal tone of voice. At no point did Fagone hear the Respondent use profanity.

Fagone testified that the post on Canal and West Streets is a dangerous post that requires a vehicle. He explained that the vehicle is used to block traffic and there are speeding cars that do not notice the officer unless there are turret lights going. Fagone could not think of an officer ever being assigned that post without a vehicle.

On cross-examination, Fagone testified that sometimes the officer assigned to the post on Canal and West Streets is given a scooter instead of a car.

Police Officer Edward Paynter

Paynter, a 15-year member of the Department, has been assigned to MTTF for 14 years. He testified that he was standing outside the command on July 21, 2009 when he observed the Respondent walking toward Seventh Avenue. Shortly thereafter, Carini angrily stormed out of the building and yelled at the Respondent that he was not through speaking with him. According to Paynter, the situation was embarrassing because there were tourists across the street watching. The Respondent and Carini subsequently reentered the building. Paynter did not see the Respondent engage in any sort of dispute earlier in the tour.

Paynter testified that officers assigned to the post at Canal and West Streets are generally given a scooter to control traffic. He explained that the area is highly congested and a vehicle with turret lights is necessary for safety reasons. He could not recall an officer ever being assigned that post without a vehicle.

On cross-examination, Paynter testified that he did not know why Carini was upset with the Respondent. In order to be given a scooter, an officer must be scooter-qualified. An officer has to follow lawful commands given by a supervisor. Paynter stated that he would not refuse to take a post because there was not a scooter available.

On re-direct examination, Paynter testified that if he were asked by a supervisor to do something unsafe, he would discuss his concerns with the supervisor. If the supervisor still insisted that he do the unsafe thing, he would probably comply.

Police Officer Susan Cassidy

Cassidy, an 18-year member of the Department, has been assigned to MTTF for eight years. She testified that on July 21, 2009, she was speaking with Vespa behind the desk when she observed the Respondent and Carini engaged in a dispute. She explained that the Respondent followed Carini into the command, and Carini said something to the Respondent that Cassidy could not hear. The Respondent then yelled, "I am not your son, you don't get to talk to me that way. You're not my father." The Respondent did not use any expletives. Vespa told the Respondent to shut up and go to post, and the Respondent turned around and started to walk out the door. Before the Respondent could get outside, however, Carini stopped him and told him to stand by. Cassidy did not see the Respondent engage in any sort of dispute earlier in the tour.

Cassidy testified that an officer assigned to the post on Canal and West Streets is supposed to use a car, scooter or van. She explained that a vehicle with turret lights is needed to act as a physical barrier against traffic. She has never heard of anybody being assigned that post without a vehicle.

On cross-examination, Cassidy testified that she did not see what occurred between the Respondent and Carini outside. At no point did she hear Carini use profanity.

Police Officer James Palmer

Palmer, a 15-year member of the Department, has been assigned to MTTF for 14 years. He testified that while working at the telephone switchboard on July 21, 2009, he observed the Respondent and Carini enter the building, "screaming at each other at a high level of voice." Carini told the Respondent to shut up, and the Respondent loudly replied, "Don't talk to me like that, you are not my father." Palmer stated that he could not recall what else the Respondent and Carini told each other, but the conversation remained heated.

Palmer testified that on February 25, 2009, he was assigned to a checkpoint with the Respondent. At one point, Carini arrived at the location and had a heated exchange with the Respondent. Carini, who was unsatisfied with the number of summonses that had been prepared, stated that he was, "fed up with the fucking crybaby bullshit." Carini and the Respondent proceeded to speak to each other in a raised tone of voice, but Palmer was standing several feet away and could not hear exactly what they were saying.

Palmer stated that the officer assigned to the post at Canal and West Streets is usually given a vehicle. He explained that the post is very dangerous and a vehicle is needed to control the flow of traffic. He could not recall anybody ever working the post without a vehicle.

On cross-examination, Palmer testified that during the February 2009 incident Carini was annoyed with all four officers who were assigned to the checkpoint because he did not believe that they had written enough summonses. He did not single out the Respondent. Instead, he made all four officers remain at the checkpoint for an extra 45 minutes. Carini did not issue anybody a Command Discipline that day.

Official Department Interview of Police Officer Kyle Trisarnsri

Respondent's Exhibits A and A1 are the tape and transcript of Kyle Trisarnsri's Official Department Interview, dated July 31, 2009. Trisarnsri was out sick with a line-of-duty injury and was unable to appear at trial.

In the interview, Trisarnsri stated that the Respondent and Carini did not have a good relationship. He explained that he was working the February 2009 checkpoint when Carini became upset with the number of summonses that had been written. Carini argued with the Respondent and Palmer and Trisarnsri heard Carini curse. The Respondent and Carini spoke loudly to each other, but Trisarnsri could not recall exactly what they said. Nor did he recall ever hearing the Respondent curse.

Trisarnsri stated that traffic can get heavy in the area of West and Canal Streets and he has always worked that post with either a Department car or scooter. He explained that drivers sometimes do not pay attention and a Department vehicle with lights on makes the post safer.

Respondent Police Officer Julio Silva

The Respondent, a 13-year member of the Department, is currently assigned to Housing Borough Bronx. He worked at MTTF for approximately ten years. He has never before been the subject of Department charges. On July 21, 2009, he was assigned to the post on Canal and West Streets. After roll call, he had a conversation with McNamara. The Respondent told McNamara that he would assist him in any way possible, but he needed a vehicle for his post. The Respondent explained to the Court that a vehicle was necessary at that post, he would not have felt safe there without a vehicle and he had never heard of anybody working the post without one. Either a scooter or a car could be used, but the Respondent was not scooter-qualified. The conversation ended with McNamara telling the Respondent to wait for a car to become available. During this conversation, the Respondent and McNamara were on opposite sides of the desk and the area was noisy. There was not any animosity between them, and McNamara did not attempt to discipline the Respondent in any way.

At one point, Carini asked the Respondent what the problem was. The Respondent walked over to Carini and informed him that there was no problem and that he was just waiting for a car. Carini instructed the Respondent to go to post and the Respondent told him again that he was waiting for a car. The Respondent proceeded to point out to Carini that nobody ever went to the post on Canal and West Streets without a vehicle. He mentioned this to Carini because it would have been dangerous for him to work the post without a vehicle. When Carini asked the Respondent, "What does that have to do with anything," the Respondent felt that Carini was being belligerent. At that point, the Respondent grabbed his patrol bag, told Carini that he was going to post, turned

around and walked out of the building. The Respondent planned on getting a ride to post or taking the subway there. He explained that once he got to post he would have contacted McNamara about getting a vehicle. At no point while he was walking out of the command did Carini order him to stop. According to the Respondent, at no point that day, did he refuse to go to his post.

The Respondent testified that when he got outside of the building, he walked approximately 20 feet and then looked in his patrol bag to see if he had his MetroCard. At that point, Carini exited the building and yelled at him, "Get the fuck back here. I am not done talking to you yet." The Respondent was upset by Carini's profanity and tone of voice, especially since both of them were in full uniform at the time. The Respondent replied, "You are not my father, don't talk to me that way." He explained that he wanted to show Carini that he was acting inappropriately by cursing and yelling in uniform. He continued, "If [Carini] wanted to take me aside and talk to me by ourselves and explain to me he was unhappy with whatever I made him unhappy about, that would have been fine with me." As somebody who respects the rank structure of the Department, it was not the Respondent's intention to be discourteous or insubordinate.

When Carini told the Respondent to go back inside, the Respondent started toward the door. Halfway to the door, the Respondent stopped walking, turned to Carini and asked if he needed to get a delegate or the platoon commander involved in the situation. Carini told the Respondent, "I don't give a shit, just keep going." At that point, the Respondent told Carini to stop talking to him that way and he proceeded into the command. Carini followed the Respondent inside.

Once inside the command, Carini told the Respondent to shut up and the Respondent replied again, "Stop talking to me that way, you are not my father " The Respondent explained that he did not like Carini's tone or mannerisms or the fact that they were in public There were a lot of other police officers in the area and the Respondent felt embarrassed After this final exchange with Carini, Vespa told the Respondent to go to post The Respondent picked up his bag, turned around and walked toward the door Before he got there, Carini stopped him The Respondent put down his bag and walked to the back room to get a bottle of water from the soda machines The Respondent testified that while he talks with his hands, at no point that day did he point at Carini He never told Carini not to tell him what to do, nor did he tell Carini that he was not talking to him The Respondent did not use any expletives As a result of the incident, the Respondent was suspended for 30 days He has been on modified duty status ever since

The Respondent had a previous incident with Carini in February 2009, when Carini was unsatisfied with the number of summonses that the Respondent and other officers had written at a checkpoint According to the Respondent, Carini told him at the time, "Is this because of you? You are the cause of this all " The Respondent interpreted this as an accusation that he (the Respondent) influenced the other officers not to write summonses Although Carini was clearly upset and used harsh language, he did not yell or curse at the Respondent

On cross-examination, the Respondent testified that at the February 2009 checkpoint, Carini helped the other three officers get summonses but Carini did not help him Carini did not issue anybody a Command Discipline

Sometimes the officer assigned to the post on Canal and West Streets is given a scooter instead of a car. On July 21, 2009, the Respondent told McNamara that he would assist at post if he had a vehicle. McNamara informed the Respondent that no vehicles were available but that he (McNamara) would find one for him. The Respondent testified that he was not going to do his assignment without a vehicle and he told this to Carini. At the time, the Respondent knew in the back of his mind that McNamara was working on getting him a car.

The Respondent did not have a good working relationship with Carini. When Carini started to become belligerent, the Respondent decided to leave the building because he wanted to avoid a confrontation. According to the Respondent, the only time during the incident that he might have raised his voice was after Carini followed him outside and used profanity at him. The verbal altercation outside of the building lasted a minute or less. At no point did the Respondent glare at Carini.

On re-direct examination, the Respondent testified that he looked at Carini while Carini was speaking to him. When he spoke with Carini about going to post, he was trying to convey his safety concerns to him. He reiterated that when he exited the building he planned on taking the subway to post. He explained, "[I would] get to post, setup as best I could and, being a former delegate, going through the proper channels, making it known that I didn't agree with not having a vehicle there because of safety concerns."

FINDINGS AND ANALYSIS

The Respondent is charged that on July 21, 2009, while on duty, he was discourteous to Sergeant James Carini in that he threw up his hands and yelled "I'm not going to talk to you, I have had enough, I'm leaving" (Spec 1), and he pointed his finger at Carini stating, "Don't tell me what to do, your are not my father, I'm not talking to you" (Spec 3) He was further charged with failing to complying with Carini's order to stay quiet and stand by (Spec 2)

Sergeant McNamara told this Court that on July 21, 2009, he worked as patrol supervisor, noting that the Respondent was assigned to a fixed post on Canal and West Streets to direct the heavy flow of traffic When he told the Respondent that he would be needed at a surge deployment near his post that Respondent became loud and argumentative telling McNamara that he was not scooter qualified, an issue that McNamara had not raised During his conversation with the Respondent, McNamara became frustrated to the point where he began to bang a book against his (McNamara's) head Subsequent to his encounter with the Respondent, McNamara saw the Respondent pointing his finger at Sergeant Carini and telling him in a loud and argumentative manner, "You are not my father, you can't speak to me like that "

When McNamara heard what the Respondent had said to Carini, the Respondent was standing in front of the station house desk and Carini was behind the desk McNamara did not see the Respondent walk towards Carini and his attention only became focused on them when he heard the Respondent make the comment about Carini not being his father

Sergeant Carini had observed the Respondent having a heated exchange of words with McNamara concerning scooter qualification or keys to a Department car. They were approximately 10 feet away from Carini. Carini described the Respondent's tone of voice as uncooperative and that McNamara seemed frustrated. Carini motioned for the Respondent to come over to him and the Respondent complied. Carini then told the Respondent that he would give the Respondent a ride to and from his post. In response the Respondent told him that he was not going to be the first officer to work the post without a vehicle and when Carini replied "Really? Says who," the Respondent threw up his hands and loudly screamed, "You know, I don't need to talk to you, I am done, I am leaving. I am done. I don't need to listen to you, I am leaving now" and he walked out of the building. Carini followed the Respondent out and told the Respondent that he was not done talking to him and to come back into the station house. The Respondent did not comply. Instead he pointed his finger at Carini and screamed, "You are not my father, don't tell me what to do, I don't need to listen to you." It was only after Carini told him three or four times to return that the Respondent complied.

Once inside the building, Carini and the Respondent walked to the desk area and Carini told the Respondent, "Stay here and keep your mouth closed. I don't want to hear another word." The Respondent did not comply with this order. Instead, he dropped his bag, pushed out his chest at Carini, pointed his finger at him in a violent and threatening manner and screamed at the top of his lungs, "You are not my father, you don't tell me what to do, don't you talk to me like that, I don't have to listen to you." Carini had to tell the Respondent several times to close his mouth and shut up before the Respondent complied with the order.

After noting the incident in the Respondent's Activity Log, Carini told him that disciplinary action might be taken. At that point, the Respondent started to yell again. Both Carini and Sergeant Vespa instructed him to be quiet. The Respondent was compliant but, as he walked away from the desk, he turned around halfway and glared at Carini while nodding his head up and down. The entire incident lasted about ten minutes.

Sergeant Vespa saw the Respondent point his finger at Carini and angrily yelled, "you are not my father, you don't tell me what to do." Vespa directed the Respondent to step away from the desk area and he complied. As the Respondent walked to the roll call area, Vespa saw him glare at Carini. At no point did Vespa hear Carini use profanity.

Officers Fagone, Paynter, Cassidy and Palmer testified for the Respondent. Fagone was outside when he saw the Respondent and heard Carini say to him, "I am not done speaking with you, come back inside the building now." He further heard the Respondent tell Carini, "I am not your child, don't speak to me like that." It was only after Carini repeated that he wanted the Respondent back inside, that the Respondent complied.

Paynter saw the Respondent walking outside the station house and also saw Carini angrily come out of the building and yell at the Respondent that he was not through speaking with him.

Cassidy was behind the desk when she observed the Respondent and Carini engage in a dispute. While she could not hear what Carini was saying, she did hear the Respondent say, "I am not your son, you don't talk to me that way. You're not my father."

During Officer Tnsamsri's official Department interview, he spoke of an incident in February 2009, where Carini became upset with him, Palmer and the Respondent for not writing enough summonses. The Respondent and Carini spoke loudly to each other and while he could not recall what they said, he heard Carini curse.

The Respondent told this Court that on July 21, 2009, he had a conversation with McNamara about getting him a vehicle for his post. His concern was that he needed the vehicle to work the post because it was located at the busy intersection of Canal and West Streets. McNamara, according to the Respondent, told him to wait for a car.

At one point, Carini asked him what was the problem and the Respondent told him there was none. Carini told him to go to his post and the Respondent told him he was waiting for a car. He stated that when Carini responded, "What does that have to do with anything," the Respondent thought he was being belligerent and he told Carini he was going to his post and walked out of the building. Carini followed him out and the Respondent said he yelled to him, "Get the fuck back here. I am not done talking to you yet." The Respondent became upset with Carini's profanity and tone of voice and told him, "You are not my father, don't talk to me that way." He explained that he was trying to show that Carini was acting inappropriately by cursing and yelling in uniform.

The Respondent returned to the station house and once inside he said that Carini told him to shut up and he told Carini, "Stop talking to me that way, you are not my father." The Respondent stated that while he talks with his hands, he did not point his finger at Carini. He did tell Carini, however, that he was not going to do his assignment without a vehicle. He stated that the only time he raised his voice was when Carini used profanity towards him.

In this Court's opinion, the Respondent's testimony did not outweigh the credible testimony of McNamara, Carini and Vespa. Their testimony has convinced this Court that the Respondent was discourteous on two occasions and disobedient to Carini's directive—all on the same day at the station house. There was no credible evidence that Carini used profanity towards the Respondent or that he acted outside the scope of his official duties.

Accordingly the Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974). The Respondent was appointed to the Department on August 31, 1998. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of being discourteous towards Carini on two occasions and disobedient to his directive, all on the same day.

In Disciplinary Case No. 81635/06, an eleven-year member with no prior disciplinary record forfeited 30 vacation days and was placed on one year dismissal probation for being discourteous to a lieutenant when the lieutenant attempted to instruct him on handling civilian complaints on the telephone. Respondent stood up, shook his head, and loudly disagreed with the lieutenant. In an unrelated incident, Respondent disobeyed a supervisor's order to assume RMP recorder duties.

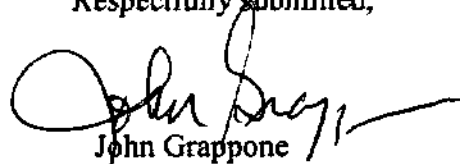
In Disciplinary Case No 83971/08, a fifteen-year detective with no prior disciplinary record forfeited 30 vacation days for refusing to answer a supervisor's questions and being discourteous toward that supervisor. On the first occasion, Respondent refused to answer a sergeant's questions about the unauthorized use of a vehicle. Respondent told the sergeant, "I don't see how it's any of your business. You ain't my father so why are you treating me like I'm your fucking son?" On the second occasion, Respondent refused to answer the sergeant's questions about why he called the command and stated, "What the fuck don't you understand about the fact that I don't need to talk to a supervisor? I'm telling you I have nothing to say to you."

This Court is certainly mindful of the many dangers associated with police work. Included in those dangerous situations is standing at busy intersections directing the flow of traffic in order to help keep the traffic moving and to further help people get to their destinations safely. When confronted with a possible dangerous situation, as the Respondent may have been, an officer cannot use that situation as a license to be discourteous to or fail to obey the directives of a superior officer, as the Respondent did on July 21, 2009. In addition, the Respondent's belligerent and discourteous behavior towards Carim, a superior officer, is unacceptable within the Department's paramilitary organization.

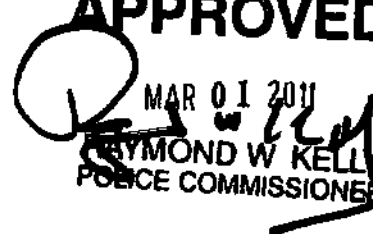
The Department has recommended as a penalty a forfeiture of 30 days time served on suspension and I concur.

Therefore, based on the foregoing, it is recommended that the Respondent forfeit
as a penalty the 30 days time he served on suspension

Respectfully submitted,



John Grappone
Assistant Deputy Commissioner – Trials

APPROVED
MAR 01 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER JULIO SILVA
TAX REGISTRY NO 923180
DISCIPLINARY CASE NOS 85602/09

On the last three performance evaluations contained in his personnel file, the Respondent received a rating of 4 0 “Highly Competent,” 3 5 “Competent/Highly Competent,” and 3 0 “Competent ” [REDACTED]

The Respondent has no prior formal disciplinary record On December 22, 2009, the Respondent was placed on LEVEL II DISCIPLINE MONITORING, based on his overall record

For your consideration

John Grappone
Assistant Deputy Commissioner – Trials