



POLICE DEPARTMENT

May 20, 2019

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Crystal Jackson :

Tax Registry No. 949134 :

7th Precinct :

Case No.

2018-18972

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

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

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Crystal Jackson, while assigned to the 7th Precinct, on or about March 27, 2018, while on duty, improperly utilized her Department issued smartphone to take digital photographs of people present at a political event at which she was assigned to perform official duties, and thereafter wrongfully took steps to delete said photographs from said smartphone.
2015 Op. Order No. 20, Page 3, Para. 17 and Pages 4-5, Para. 26 Pilot Program - Use of Department Smartphones and Tablets
2015 Op. Order No. 20, Pages 6-7 (Retention and Transmission of Digital Media Stored in Dept. Smartphone/Tablet) Pilot Program - Use of Department Smartphones and Tablets
P.G. 212-71 Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations
P.G. 212-72 Guidelines for Uniformed Members of the Service Conducting Investigations Involving Political Activities
2. Said Police Officer Crystal Jackson, while assigned to the 7th Precinct, on or about March 27, 2018, while on duty, having been directed by New York City Police Sergeant Anthony Mahepath to put away or to stop utilizing her Department-issued smartphone at a political event at which she was assigned to perform official duties, said Police Officer wrongfully failed and neglected to comply with said direction.
P.G. 203-03, Page 1, Paragraph 2 Compliance with Orders
P.G. 203-05, Page 1, Paragraph 1 Performance on Duty - General
3. Said Police Officer Crystal Jackson, while assigned to the 7th Precinct, on or about March 27, 2018, while on duty, was discourteous to on-duty New York City Police Sergeant Anthony Mahepath.
P.G. 203-09, Page 1, Paragraph 2 Public Contact - General
4. Said Police Officer Crystal Jackson, while assigned to the 7th Precinct, on or about March 27, 2018 and/or April 25, 2018, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer made inaccurate, incomplete, or otherwise misleading statements during an official Department interview as to her reasons for taking photographs at an event involving political activities.
P.G. 203-10, Page 1, Paragraph 5 Public Contact - Prohibited Conduct

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 18, 2019. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeants Edward Herdina and Anthony Mahepath as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find as follows:

Specification 1 (improper photographs, deletion): Guilty

Specification 2 (failure to comply): Not Guilty

Specification 3 (discourteous to supervisor): Not Guilty

Specification 4 (misleading statements): Not Guilty

Recommended penalty: ten (10) vacation days.

ANALYSIS

On March 27, 2018, Respondent was assigned to a detail that was policing a civilian demonstration outside the New Guinea consulate on East 39th Street in Manhattan. At about 1215 hours, Respondent used her Department smartphone to take two photographs of people on 39th street that included many of the protesters. A minute later, Respondent used the phone to take two additional photographs that included several UMOS as well as the protesters. Respondent is charged with wrongfully utilizing the phone to take those photographs, wrongfully taking steps to delete two of the pictures, failing to comply with a sergeant's direction to stop utilizing her phone in that manner, and being discourteous to that sergeant. Respondent also is accused of making inaccurate statements about the incident during two Department interviews.

Sergeant Anthony Mahepath testified that Respondent was part of a team that was assembled to deal with the demonstration at the consulate. He instructed the officers to try to keep the protesters on the sidewalk, so that vehicular traffic could safely flow. At some point, Sergeant Mahepath observed Respondent using her Department phone; it appeared that she was taking pictures of the protesters, rather than keeping them on the sidewalk. He instructed her to put the phone away, and Respondent replied that it was her Department phone, and she could use it any time she wanted. The sergeant told her she could not use it, and Respondent put the phone away. (Tr. 50, 53-55)

At some later point, Sergeant Mahepath again saw Respondent using her Department phone as if she were taking photographs. He claimed, though, that he did not see her pointing the phone at him. The sergeant requested Respondent's memo book, and wrote an entry at 1217 hours that states, "TOLD PUT PHONE AWAY DIRECT ORDER" (Dept. Ex. 8). Respondent put her phone away. Sergeant Mahepath acknowledged that he was not wearing his Department hat in the photograph. (Tr. 55-58, 63-64, 71-72, 74 75)

Sergeant Edward Herdina of the PBMS Investigations Unit testified that he performed an audit of Respondent's Department cell phone on April 24, 2018. He reviewed the camera roll and observed two photographs taken at 1216 hours on the date of the incident. The two photographs (Dept. Ex. 2 and 3), which are almost identical, show approximately a dozen protesters, as well as several UMOS. One of the UMOS in the photographs is Sergeant Mahepath, who is not wearing his Department hat. (Tr. 17-19, 23-24)

Sergeant Herdina also reviewed the phone's recently deleted album, and observed two deleted photographs taken by Respondent a minute earlier, at 1215 hours. The two photographs (Dept. Ex. 4 and 5), which are almost identical, similarly show protesters on East 39th Street. However, in these two pictures Sergeant Mahepath cannot be seen, perhaps concealed by a

woman walking down the center of the street. Also, the protesters captured in these photographs appear different than those in Dept. Ex. 2 and 3, leading Sergeant Herdina to believe that Respondent was walking down the street toward the intersection as the second set of photographs were taken. (Tr. 19, 27-29, 39-40)

There were two Department interviews of Respondent, one on the date of the incident and one on April 25, 2018. Transcripts of these interviews were admitted into evidence (Dept. Ex. 1 and 7). In the first interview, Respondent admitted taking photographs at the demonstration solely for the purpose of capturing Sergeant Mahepath without his hat on. She explained that she felt she was being harassed by the sergeant earlier in the tour, and intended to make a complaint. She took the photographs, after which he instructed her to put the phone away. (Dept. Ex. 1 at 22-27). In the second interview, Respondent acknowledged that she did not take the photographs to capture the commission of a crime. Rather, she "wanted to get a clear picture of Sergeant Mahepath without his hat." She deleted two of the photographs because they were taken at a poor angle and did not show the sergeant. (Dept. Ex. 7 at 5-7)

Respondent testified that she had no position with respect to the New Guinea protest, and that she only took the photographs to capture Sergeant Mahepath without his hat. She explained that she intended to file a complaint against the sergeant because she was being mistreated by him. For instance, early in her tour she asked for Sergeant Mahepath's name so she could enter it in her memo book; he told her to just call him "Sarge." Sergeant Mahepath referred to Respondent as "young lady." The sergeant shoved the detail roster sheet at Respondent and told her to fill it out, even though that should have been his responsibility. Sergeant Mahepath also sent Respondent's partner, Officer Smiling, back to her police van to retrieve her hat, which Respondent felt was hypocritical since the sergeant, himself, was not wearing his hat. (Tr. 83-87, 92-94, 98)

According to Respondent, at 1215 hours she decided to use her Department cell phone to photograph Sergeant Mahepath without his hat. The first two photographs (Dept. Ex. 4 and 5) did not capture the sergeant because a female walked in front of him; that is why she deleted those two photographs. Respondent testified that she zoomed in to take the second set of photographs (Dept. Ex. 2 and 3), which did capture the sergeant without his hat. At 1217 hours, Sergeant Mahepath told her to get off her phone. Respondent stated to him that it was her Department cell phone, as opposed to her personal phone, and she put the phone away. The sergeant asked for her memo book, and Respondent asked him to please write down that it was her Department cell phone. According to Respondent, this was the first time Sergeant Mahepath instructed her to put away the phone. (Tr. 86, 88-92, 97, 101)

Specification 1 charges Respondent with improperly using her Department smartphone to take photographs of people at a political event, two of which she wrongfully took steps to delete. Operations Order No. 20 of 2015, in effect at the time of this incident, provides the procedures to be followed regarding use of Department smartphones. Specifically, paragraph 26(d) prohibits an MOS from using her phone to photograph attendance at political demonstrations. This prohibition stems from the 1985 "Handschu Consent Decree," which has been incorporated into the Patrol Guide and governs the Department's investigation of crimes that involve political activity. The Operations Order also prohibits an MOS from deleting any photographs taken with her Department smartphone.

Here, it is undisputed that Respondent used her Department smartphone to take four photographs while she was assigned to police a political demonstration at the New Guinea consulate. Each of these photographs depicts a dozen or so demonstrators at the protest, contrary to the guidelines of the 2015 Operations Order.

On the one hand, Respondent testified convincingly that she personally held no position regarding the political dispute that day, and had no reason to photograph any of the demonstrators. I credit that her only intention in taking the photographs was to memorialize that Sergeant Mahepath was not wearing his Department hat. Nevertheless, Respondent was aware, or should have been aware, that a number of protesters were captured in her photographs as well. Indeed, the very act of taking out her Department smartphone and using it to take photographs at the scene of a political demonstration such as this is precisely the type of behavior prohibited by the Handschu guidelines.

Additionally, it is undisputed that Respondent took steps to delete two of the photographs taken with her Department smartphone. Sergeant Herdina testified credibly that he retrieved the two photographs from the "Recently Deleted" section of the phone, and that the photographs were due to be permanently deleted two days later. Respondent admitted that she deleted the photographs, explaining that she did so because they did not capture Sergeant Mahepath without his hat; a woman walking down the street blocked the sergeant from view at the time the photographs were taken. However, this explanation, while credible, still does not excuse Respondent's deletion of the photographs. The Operations Order specifically requires an MOS to retain any photographs on the device itself. Contrary to this order, Respondent took steps to delete two of the photographs.

The credible evidence has established that Respondent improperly utilized her Department smartphone to take photographs of demonstrators at a political event. She then wrongfully took steps to delete two of the photographs. Accordingly, I find Respondent guilty of Specification 1.

Specification 2 charges Respondent with failing to comply with Sergeant Mahepath's direction to put away or stop utilizing her Department smartphone, and Specification 3 charges

Respondent with being discourteous to the sergeant. Neither charge has been proven by a preponderance of the credible evidence.

Sergeant Mahepath testified that he warned Respondent to put away her phone, and that she then defied his order by using the phone to take photographs. However, that claim was not corroborated. The only relevant entry the sergeant made in Respondent's memo book indicated his direct order to put away her phone; that entry was made at 1217 hours, *after* the photographs already had been taken, and it makes no reference to any earlier order. Respondent, meanwhile, testified credibly that Sergeant Mahepath first told her to put away her phone at 1217 hours, after she had just taken the photographs. She promptly complied with his request, and stated to the sergeant that it was her Department cell phone, not her personal phone, which she was using; under the circumstances, that comment did not rise to the level of discourtesy.

As such, the credible evidence has failed to establish that Respondent defied an order from Sergeant Mahepath. Similarly, nothing in her interaction with the sergeant constituted discourtesy. Accordingly, I find Respondent not guilty of Specifications 2 and 3.

Specification 4 charges Respondent with making inaccurate or misleading statements during two Department interviews as to her reasons for taking the photographs. Specifically, it is alleged that Respondent falsely claimed that her sole reason for taking the photographs was to capture Sergeant Mahepath without his hat. The Department Advocate suggested in his closing argument that Respondent initially took photographs of the protesters (Dept. Ex. 4 and 5), and only took the second two photographs (Dept. Ex. 2 and 3) in retaliation for having been reprimanded by Sergeant Mahepath.

However, as discussed above, Respondent credibly testified that she had no reason to take photographs of the demonstrators; she had absolutely no interest in the protest. Rather, Respondent's only goal was to memorialize that Sergeant Mahepath was not wearing his hat,

after the sergeant earlier had reprimanded Officer Smiling for not wearing her hat. Respondent felt that Sergeant Mahepath was being "hypocritical," and that he had "harassed" her earlier in the tour, and so she intended to file a complaint. As Respondent stated in both interviews, all the photographs were taken only to show Sergeant Mahepath without his hat. Under the circumstances, I find it more likely than not that the two photographs that did not capture the sergeant failed to do so only because a pedestrian walked in the way.

As such, the credible evidence has failed to establish that Respondent's answers at her two Department interviews were inaccurate, incomplete, or otherwise misleading. Accordingly, I find Respondent not guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2010. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

The Department Advocate recommends that Respondent forfeit twenty-five (25) vacation days. However, Respondent has been found guilty of only one of the four specifications, and so a lesser penalty is warranted. On the one hand, I credit that Respondent did not intend to photograph the protesters, and was only trying to memorialize that the sergeant was not wearing his Department hat. Even so, Respondent exercised poor judgment in using her Department smartphone in the middle of a political demonstration to take multiple pictures: each of those photographs captured a dozen or so protesters. The Handschu guidelines specifically prohibit such conduct, and Respondent is responsible for knowing and adhering to those rules.

Respondent compounded that error in judgment by deleting two of the photographs, also in violation of Department guidelines.

There must be some accountability for Respondent's actions. Taking into account the totality of circumstances and issues in this matter, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

SEP 13 2019

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CRYSTAL JACKSON
TAX REGISTRY NO. 949134
DISCIPLINARY CASE NO. 2018-18972

Respondent was appointed to the Department under Tax Registry No. 949134 on July 6, 2010. [REDACTED]

Respondent received the following ratings on her last three annual performance evaluations: in 2014 and 2016, she received overall ratings of 3.5 "Highly Competent/Competent"; in 2015, she received an overall rating of 4.5 "Extremely Competent/Highly Competent." [REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials