



POLICE DEPARTMENT

April 24, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer David Lambert
Tax Registry No. 924049
79 Precinct
Disciplinary Case No. 82724/07

The above-named member of the Department appeared before me on January 9 and January 18, 2008, charged with the following:

1. Said Police Officer David Lambert, assigned to the 79 Precinct, while off-duty, in or about November 2005, at location known to this Department, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Officer did sell a 2003 Suzuki LTZ-400 ATV while knowing, or having reason to know, that said vehicle may have been stolen.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

The Department was represented by Michelle Blackman, Esq., Department Advocate's Office, and the Respondent was represented by Stuart London, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant David Gomes and Captain Philip Romanzi as witnesses.

Sergeant David Gomes

Sergeant Gomes, a member of the Department since July of 1996, has been assigned as an investigator with the Internal Affairs Bureau (IAB) Group 31 for the last two years. In that capacity he conducts confidential investigations into allegations of corruption or misconduct against members of the service.

In January of 2006, Gomes became involved in an investigation of the Respondent as a result of a call made from the Suffolk County IAB pertaining to a log that was generated by their investigators. Gomes testified that Detective Cook of the Suffolk County Police Department was investigating the report of a stolen all-terrain vehicle (ATV) and in that regard interviewed Sergeant George Ruppel¹ of the 79 Precinct. Gomes explained that although he was the only investigator assigned to the case, the actual "callout" was done by Lieutenant Mark DeFazio of Group 31, who interviewed members of the Suffolk County Police Department. Gomes also conducted interviews of those members.

Gomes testified that he spoke with Detective Cook about Cook's investigation into the stolen ATV and his conversation with the complainant, [REDACTED] [REDACTED] told Cook that he discovered what he believed to be his ATV listed for sale on eBay. When Gomes interviewed [REDACTED], [REDACTED] told him that he was not

¹ Sergeant Ruppel's surname is misspelled "Rouppel" in the transcript.

satisfied with the effort Cook was putting forth in the matter, and so he contacted his sister, [REDACTED], who is a State Trooper in upstate New York. He testified that [REDACTED] [REDACTED] contacted an investigator in her office who tracked down the eBay listing and traced the holder of the account to George Ruppel, an NYPD sergeant assigned to the 79 Precinct. Gomes and his investigators subsequently interviewed Ruppel, who told them that he purchased the ATV from the Respondent, an officer in his command.

Gomes testified that he and his investigators interviewed the Respondent three times. The first time was prior to their interview of Ruppel, when the Respondent contacted IAB and asked if he could talk to them about the allegation against him. Gomes recalled that the Respondent was asked how he came into possession of the ATV, the circumstances surrounding his purchase of it, and the subsequent sale of the vehicle to Ruppel. According to Gomes, the Respondent explained that he had been shopping for an ATV at a Suzuki dealership in Medford, Long Island, but left the dealership after finding the prices to be "out of his range." Upon leaving the dealership, the Respondent was approached by an individual who told him he wanted to sell his ATV and asked him if he was in the market for one. (According to Gomes, the Respondent did not name or provide any other information about this individual during this interview.) The Respondent told Gomes that he and the seller agreed on a price for the ATV, and the seller wrote down his name and the address of the location where the Respondent could pick up the ATV. The Respondent informed Gomes that he went home, went to the bank and withdrew money, and then went to the location to purchase the ATV. Gomes testified that the Respondent told him he paid either \$1,300 or \$1,400 for the ATV, but the Respondent was not sure of the exact amount. The Respondent further told him that

he had never met the seller of the ATV before. According to Gomes, the Respondent drove to the seller's location with a trailer to load the ATV onto, gave the seller the money, then took the ATV and left. Gomes testified that when the Respondent was asked if he had obtained a title, a receipt, or any other paperwork for the ATV, he said that he had not.

In the course of their investigation, Gomes and his team contacted the NYPD Auto Crime Division and the Suzuki dealership about the paperwork required for the sale and purchase of an ATV. Gomes testified that he also spoke with an investigator from the New York State Department of Motor Vehicles (DMV). According to Gomes, he examined what paperwork was required for the sale and purchase of a vehicle of the same model as that purchased by the Respondent, a Suzuki LTZ 400. He learned that any purchase of an ATV with an engine size over 50cc required a title.² The Suzuki ATV the Respondent purchased had a 400 cc engine. Gomes agreed that, pursuant to his investigation, a title was required for the ATV that the Respondent purchased.

Gomes further testified that he interviewed the Respondent a second time during an official Department interview held on October 5, 2006. During that interview the Respondent reiterated what he previously told IAB: that he was shopping on Long Island for an ATV and he was approached in the parking lot of the Suzuki dealership by an individual who was trying to sell his ATV. The seller gave the Respondent his name and address and told him to come to his house where they would conduct the transaction. After the Respondent determined that the ATV was in good working condition at the seller's address, he loaded it into the trailer and drove home.

² Gomes informed the Court that the purchase of an ATV with an engine size of 50cc or below would be "similar" to that of purchasing a bicycle.

The Respondent also told Gomes that he had the ATV for several months before he decided to sell it and used the money to buy a motorcycle. Gomes recalled that the Respondent stated that he sold the ATV to Sergeant George Ruppel who was the Respondent's assistant integrity control officer at the 79 Precinct, in November of 2005. The Respondent further told Gomes that when he purchased the ATV it was in running condition but had sustained a lot of "cosmetic damage" such as scratches, dents and a broken light. The Respondent replaced the broken light and did other minor repairs to the vehicle.

Gomes stated that in the course of his investigation, he learned that all ATVs are supposed to have vehicle identification numbers (VINs) and was informed by Suffolk County Auto Crime that the Respondent's ATV did not have a VIN. Gomes went to the auto pound in Suffolk County and inspected the vehicle. He was shown the location on the frame where the VIN should have been and it was not there and noted that "It was scratched." When he questioned the Respondent about the ATV's lack of a VIN, the Respondent told him that he had never seen a VIN number on the vehicle. Because an ATV is an "off-road" vehicle, the Respondent did not believe that registration and a VIN number were required. He further questioned the Respondent in regard to the ATV not having a title and the Respondent told him that he had previously purchased an ATV from a dealership, and he did not receive a title for that vehicle. He therefore assumed that a title was not required for this purchase.

Gomes contacted a Suzuki dealership to determine the value of the type of ATV purchased by the Respondent. The dealership checked the *Blue Book* value of that type of ATV, a 2003 Suzuki LTZ 400, and determined that the value in 2005 (the year the

Respondent purchased it) would have been between \$3,400 and \$3,600 for a vehicle in good condition and \$2,610 for a vehicle in fair condition. The Respondent told Gomes he paid \$1,300 or \$1,400 for the ATV.

The Respondent further told Gomes that the reason he purchased the ATV was to use it on property he owned in upstate New York. The Respondent, however, only used the vehicle a couple of times, and since he was not getting much use out of it he decided to sell it.

Gomes testified that another official Department interview of the Respondent took place on November 8, 2006 and the Respondent did not state anything different from his prior interviews.

Gomes acknowledged that he was unable to locate the individual who sold the ATV to the Respondent because "we had no investigative tools to go on" other than that the seller was male, white or Hispanic, approximately 5'6", average size and build, and that he drove a red pickup truck. The Respondent did not provide a license number or any other information regarding the red pickup truck. Gomes stated the Respondent believed that the location where the seller lived was [REDACTED] New York, but he was unfamiliar with this area and could not provide the actual street address of the residence because "[h]e drove there once to purchase the vehicle and never returned." The Respondent did not provide a description of the seller's house, other than it was a private home where "the individual he met in the parking lot met him at that location, the pickup truck was there along with the ATV in the driveway of that residence."

On cross-examination, Gomes was presented with a single photocopy of a photograph of an ATV [Respondent's Exhibit (RX) A], a photocopy of an invoice that

depicted two photographs of a 2003 Suzuki ATV [RX B], and a photocopy of six photographs of an ATV taken from the front, back, and side of the vehicle [RX C]. Gomes recognized the ATV depicted in the photographs as the one that the Respondent purchased from the individual in the dealership parking lot.

Gomes acknowledged that Sergeant Ruppel never received a title to the ATV he purchased from the Respondent. He further acknowledged that Ruppel posted the ATV on eBay, although he did not actually sell it there; instead, he traded it to another individual named [REDACTED]³. Gomes also acknowledged that Ruppel did not give [REDACTED] a title to the vehicle when he traded it to him. When asked if Ruppel was brought up on charges for possession of stolen property, Gomes replied that he was not. When asked what his recommendation was with regard to the Respondent's case, Gomes testified, "[m]y recommendation was after conferring with the Department Advocate, I was informed at that time after just prior to conducting the PG hearings and then afterwards, the Department Advocate told me that there will be no charges in this case." Gomes recalled that as a result of the investigation into the matter, they were unable to prove or substantiate the criminal possession of stolen property allegation against either the Respondent or Sergeant Ruppel. Gomes noted that his direct supervisor, Lieutenant Charles Francis, concurred with the recommendation that no charges be brought in this case. He further noted that from that point in time to the present no incriminating evidence against the Respondent had been found.

Gomes acknowledged that in the course of his contacts with the DMV, he learned that the purchase of an ATV without a title "in and of itself" is "not illegal" and that there

³ [REDACTED]'s surname is misspelled "[REDACTED]" in the transcript.

was no requirement to register an ATV. He further acknowledged that the DMV informed him that it does not even track the existence or absence of a title.

According to Gomes, the first time he spoke to the Respondent, the Respondent came to him on his own without union or legal representation because he was concerned that he had sold something to his ICO that may have been stolen. Gomes acknowledged that everything the Respondent told him at that time was consistent with what he stated in his next two official Department interviews. Gomes stated that his commanding officer told him that initially both the Respondent and Ruppel wanted to come in and talk to them about the matter, but Ruppel later changed his mind and subsequently underwent an official Department interview wherein he had union and/or legal representation.

Gomes acknowledged that he questioned [REDACTED] who told him that he had traded with other ATV owners in the past and that it was not uncommon for them to lack titles to their vehicles. Suffolk County subsequently confiscated the ATV from [REDACTED] and to Gomes's knowledge, Ruppel did not return what he traded to [REDACTED]

Gomes testified that the ATV's ignition appeared to be intact. He further testified that, according to the Respondent, no one saw the condition of the vehicle at the time he purchased it because he had made repairs to it before selling it to Ruppel. Gomes acknowledged that he was learning for the first time at trial that the Respondent paid Ruppel back the \$2,000 he paid for the ATV.

Gomes identified a document shown to him as an "IAB intelligence request" which was conducted by Detective Crowell of IAB and contained information regarding the Respondent. According to Gomes, the information in the document described the Respondent as very professional and "by the book" and that members of his command

were surprised he had an allegation of criminal possession of stolen property lodged against him. Gomes acknowledged that he did not receive any information to indicate that the Respondent ever had any knowledge that the ATV was stolen. He concurred that after conferring with the Assistant Department Advocate, his recommendation and that of his supervisor was that no charges be brought in this case.

On redirect examination, Gomes recalled that the Assistant Department Advocate he spoke to in regard to this matter was Cynthia Halm,⁴ and that he spoke to her both in person and on the telephone. He recalled that he first spoke to her just prior to conducting the official Department interviews of the Respondent and Sergeant Ruppel. He informed her of the status of the investigation at that time and she told him to contact her again after the official Department interviews were conducted. According to Gomes, Halm stated that unless some admission of guilt was made by either Ruppel or the Respondent, the case would not warrant charges and specifications. He acknowledged that at this point in time, Halm did not have the investigative file with her and their conversation was a preliminary one about what he had discovered up to that point. Gomes testified that he did not know what Halm's position or rank was within the Department, although he recalled that she mentioned that she would be conferring with her supervisor, Lisa Bland, about the investigation. He agreed that from what Halm indicated, she did not have the final determination regarding this investigation, nor did her opinion regarding the charges and specifications put an end to his investigation at that time.

Gomes testified that he spoke with Lisa Bland very early on in the investigation to "get a feel for where they thought this would go," and Bland told him to continue with

⁴ Assistant Department Advocate Halm's surname is misspelled "Ha" in the transcript.

the investigation and at its conclusion to contact the Department Advocate's Office and a decision would be made at that time. Gomes acknowledged that he was not told at any time by any supervisor in the Department Advocate's Office that no charges and specifications would be brought in this case. He testified that at the conclusion of his investigation, the Department Advocate's Office recommended that the Respondent be given a Schedule B Command Discipline, but the Respondent opted instead to go to trial. Gomes acknowledged that his unit's Commanding Officer, Captain Romanzi,⁵ forwarded the charges and specifications against the Respondent to the Department Advocate's Office after reviewing the investigative file and speaking to him (Gomes) at length about the investigation.

According to Gomes, the Respondent told his supervisor that outside agencies were investigating him after he learned that Sergeant Ruppel was contacted by the Suffolk County Police Department and the State Troopers. Gomes acknowledged that the Respondent was aware of the nature of the investigation when he first came to IAB.

On re-cross examination, when asked what his recommendation would be as to the preferment of charges against the Respondent, Gomes replied, "...my opinion was concurrent with what I was informed by the Department Advocate's Office; we were unable to properly prove that Officer Lambert and Sergeant Ruppel knowingly possessed stolen property which is what the allegation was." Gomes testified that, as opposed to charges, Ruppel received a Letter of Instruction. He agreed that a Letter of Instruction is a less severe form of disciplinary action than a Command Discipline.

Gomes acknowledged that Captain Romanzi was not present for the Respondent's first interview, nor was he present for either of the Respondent's two official Department

⁵ Captain Romanzi's surname is misspelled "Romanski" in the transcript.

interviews. He denied that any additional concrete information came to his attention following his conversation with Cynthia Halm.

Captain Philip Romanzi

Romanzi is a 23-year member of the Department currently assigned to Internal Affairs Bureau, Group 31. In his current capacity as the Commanding Officer of Group 31, Romanzi oversees investigations. More specifically, he determines the classification level of investigations, gives guidance and direction to the team lieutenants and investigators, and determines resources to be allocated in the investigation of each one of his group's cases. He stated that he has held his current position for the past 22 months.

Romanzi testified that the Respondent's case came to his attention in May of 2006 when he assumed command of Group 31. He reviewed the case folder and recalled that the allegation against the Respondent was the possession and sale of a stolen "quad." Romanzi defined "quad" as a four-wheel, off-road recreational vehicle, also known as an ATV. He acknowledged that he was personally involved in the investigation of the Respondent, and he reviewed the investigators' worksheets and signed them. He stated that in certain cases, including the Respondent's, he actively participates in either the official Department interview process or interacts with complainants or witnesses.

Romanzi recalled that Sergeant David Gomes was the Respondent's case investigator and Lieutenant Charles Francis was the team leader. He could not quantify the number of times he interacted with Gomes in relation to the case because, he explained, his interactions with his investigators are on an ongoing basis and they may speak three or four times a week. Romanzi testified that due to the serious nature of the

allegation against the Respondent, the case required more frequent interaction with his investigators than would the "average" case.

Romanzi testified that other officers, besides himself and his investigators, were involved with the Respondent's case. He explained that the chain of command at Group 31 is "layered." Above Romanzi is the commanding officer of his borough unit; above that person is a zone commanding officer; and above the zone commanding officer is the chief of criminal investigations. "It goes right up to the top," Romanzi testified. He acknowledged that he conferred with the borough unit commanding officer in regard to the Respondent's case; although he could not quantify the number of times he did this. "[W]e will confer on these more serious cases on almost a constant basis," he explained.

Romanzi recalled that there were two official Department interviews conducted of the Respondent and one of Sergeant Ruppel. Romanzi testified that he participated in one of these interviews due to the seriousness of the allegation. He stated that he may participate in an official Department interview if there is potential for a change-in-duty status at the conclusion of the interview, or if his expertise warrants his participation in a "low-level" case when the investigator lacks experience. He testified that in the Respondent's case the investigators did not lack experience, but the allegation against him was serious. Romanzi explained that "[the allegation] had the potential to be a felony in that stolen merchandise was acquired and then disposed of, and I consider that to be serious."

Romanzi testified that on several occasions he conferred with the executive staff of IAB and the Department Advocate's Office regarding the progress and direction of the investigation. He explained that IAB has a review process called "steering," wherein

cases are presented and discussed. At the time of the instant case the Steering Committee consisted of himself and members of the executive staff of Internal Affairs. The Respondent's case was brought before the Steering Committee a minimum of three times. Its conclusion was that disciplinary action was warranted based on the circumstances surrounding the Respondent's purchase of the ATV, how he bought it and from whom he bought it. According to Romanzi, "[i]t led us to the conclusion that it was acquired under circumstances which a trained police officer would consider illegitimate and suspicious." Specifically, after consulting with an authorized dealer Romanzi determined that the ATV was purchased at a rate far below the market value and without benefit of a title or bill of sale. In addition, he noted that, based on an analysis by trained auto crime experts from Middlesex County and Suffolk County Auto Crime, the vehicle's VIN number had been tampered with. In essence, "they told us that the VIN had been defaced on the vehicle." Romanzi described the location of the VIN number as "in an area that was easily observable to anybody looking at the vehicle." Romanzi testified that he thought it was suspicious that the Respondent did not have the address of the seller or the license plate number of the seller's pickup truck. "We thought it also suspicious that he wouldn't have this information in case shortly after purchasing this rather expensive item it was found to be defective, he had no way of returning it."

Romanzi testified that beside the Respondent, Sergeant Ruppel was also a focus of the investigation. Based on the totality of the investigation and the facts, Romanzi and the IAB Steering Committee decided that disciplinary action against the Respondent in the form of a Schedule B Command Discipline was warranted.

Romanzi testified that Sergeant Gomes and his supervisor, Lieutenant Francis, were not members of the executive staff of IAB. He explained that Gomes's role as an investigative team leader is to obtain as much information as possible in order to either prove or disprove an allegation against a member of the Department. As a lieutenant, Francis has an active role in both participating in and supervising the investigation. Romanzi testified that Gomes and Francis give their opinion to him as to whether misconduct is substantiated or unsubstantiated, and he asks them to explain their viewpoints. Romanzi recalled that Gomes and Francis told him they did not believe that disciplinary action against the Respondent was warranted. When asked if he agreed with their viewpoint, Romanzi replied, "Absolutely not." He continued, "Knowingly possessing stolen property, I didn't feel we had that level; however, like I said earlier, it was apparent to me and to the Steering Committee that the items acquired and the circumstances in which a trained police officer should have known were indicative of a suspicious transaction, illegitimate transaction." Romanzi testified that his disagreement with the investigators was based on the fact that he has considerably more experience than they do and that he is privy to the Department's internal disciplinary and prosecutorial processes "quite a bit more" than they are.

Romanzi testified that he also conferred with the executive staff of the Department Advocate's Office regarding the Respondent's case. At the conclusion of the discussion, they were in agreement that the ATV was obtained under circumstances in which a police officer should have known better.

Romanzi testified that he was informed that the Respondent was given the option to either accept or decline the Schedule B Command Discipline with the forfeiture of ten

vacation days as a penalty. It was his understanding that the Respondent declined this offer and preferred formal Charges and Specifications. Romanzi explained that when an officer declines an offer such as a Command Discipline, his or her option is to have formal Charges and Specifications served and to undergo a Departmental trial.

According to Romanzi, the conclusion regarding the investigation of Sergeant Ruppel was that since he obtained the ATV from a subordinate, he violated Department procedures in that he engaged in a financial transaction with that subordinate. As a result, Ruppel received a Letter of Instruction which was placed in his personnel folder. Romanzi acknowledged that this was the only form of discipline that Ruppel received because according to Romanzi "...when we looked at the totality of the circumstances, Sergeant Ruppel did acquire the item, the quad, from a police officer who he knew, and it was our position that he had a reasonable expectation that the item was a legitimate item not being stolen since he was acquiring it from a police officer."

On cross-examination, when asked if the reason he elected to overrule Gomes and Lieutenant Francis was because he believed the Respondent should have known better, Romanzi replied, "To put it succinctly, yes." He acknowledged that when Ruppel bought the ATV from the Respondent, Ruppel did not receive a title. Romanzi stated that although he had no way of knowing if the VIN was scratched off when Ruppel obtained the ATV, "...the investigation did point to that." He conceded that because he was not present when Ruppel purchased the vehicle, he could not be certain of its condition at that time. Romanzi acknowledged that Ruppel was the Integrity Control Officer at the 79 Precinct, but he did not know whether he dealt with misconduct on a daily basis. Romanzi explained that Ruppel "may be delegated to items other than integrity." When

Romanzi was asked if he would know that something was wrong if he purchased an ATV with no title and with the VIN number scratched off, he replied, "I wouldn't purchase that vehicle, period."

When asked why Ruppel did not receive charges for purchasing an ATV with the VIN scratched off and with no title, Romanzi reiterated, "...he purchased it from a police officer. It is our position that he had a reasonable expectation that the transaction was legitimate and the vehicle was legitimate." When asked if the Patrol Guide or an Interim Order refers to circumstances whereby a superior officer has a reasonable expectation that his purchase of any item from a police officer is a legal transaction, Romanzi answered that they do not. He conceded that superior officers are not permitted to engage in financial transactions with lower-ranking officers and that this is so stated in the Patrol Guide. Romanzi could have requested formal disciplinary action be brought against Ruppel, but the decision was made not to. While Romanzi supported the decision not to bring charges against Ruppel, he denied that the decision was made because he wanted to "protect the boss."

Romanzi testified that he became involved in the investigation involving the ATV several months after it was received. He acknowledged that he reviewed the worksheets that his predecessor had signed off on, and he therefore had an understanding of the entire case from its inception. He agreed that he trusted and relied on the input of Gomes and Francis, who conducted the investigation, but maintained that judgment of the case was his responsibility. Romanzi could not quantify the percentage of cases in which he overruled the recommendations of his lead investigators, although he allowed that it was a small number.

Romanzi acknowledged that through contact with a senior investigator from the DMV, his investigators learned that the purchase or sale of any ATV without a title is not in and of itself a crime. The title is more or less the bill of sale, and there is no requirement for an owner to register an ATV. He further acknowledged that because an ATV is an off-road vehicle, the DMV does not track the absence or existence of a title.

Romanzi testified it was evident that the Respondent possessed a stolen vehicle, the ATV, at some point and agreed that Ruppel also possessed the same vehicle. He conceded that he did not know beyond a reasonable doubt that the Respondent knowingly possessed stolen property. Romanzi agreed that the Suffolk County District Attorney's Office declined to seek an arrest in the case due to a lack of evidence.

Romanzi agreed that [REDACTED] was the individual with whom Ruppel traded the ATV on eBay and that [REDACTED] had traded ATVs on eBay in the past. After a review of his worksheets, Romanzi stated that [REDACTED] said that it was not uncommon for ATV owners not to have a title. He acknowledged that he did not bring [REDACTED]'s statements to the attention of the Steering Committee. He added that the DMV senior investigator's statements regarding the title and registration of ATVs were "paraphrased" during a Steering Committee meeting because the question was raised whether the Respondent engaged in any formal violation of the law in obtaining the vehicle without a title. "That was brought up, and it was brought to their attention that it did not constitute any formal violation of the law," testified Romanzi.

Romanzi testified that it was his belief that the ATV [REDACTED] traded with Ruppel was taken from him by the Middlesex County Police Department. Asked if he had any knowledge as to whether Ruppel returned to [REDACTED] the ATV he received from him in the

trade, Romanzi replied, "I don't know anything about that." When asked if he was aware that his investigators told [REDACTED] that he may have to go to small claims court to retrieve his ATV or the monetary value of it, Romanzi stated, "That was actually my instruction to the investigators, because a [REDACTED] was calling the office inquiring about his loss, and I told them refer him to small claims court." Asked if he did not think he needed to ask Ruppel to return the ATV he received from [REDACTED] in the eBay trade, Romanzi answered, "It is my understanding that it is outside the realm of my job description to be instructing a member of this Department on his civil liability."

When Romanzi was asked if he was aware that the Respondent returned to Ruppel the money Ruppel had paid for the ATV, he replied that he recently asked someone in his office about this and was told that the money had been returned. He acknowledged that he conducted the second official Department interview of the Respondent and was unaware at that time that the money had been paid back. Romanzi did not recall asking the Respondent if he paid back the money. He denied knowing whether the Respondent actually returned to Ruppel the money he paid for the ATV.

Romanzi testified that a Letter of Instruction, such that Ruppel received in this matter, does not carry a penalty of forfeiture of time or a "break in service." Romanzi was aware that the Respondent came in voluntarily when he found out there was a problem with the ATV he had sold to Ruppel and was questioned by members of Group 31. He was also aware that Ruppel refused to come in voluntarily. In reference to the Respondent's coming forward voluntarily, Romanzi stated that in his opinion "it gives the officer an opportunity to make self-serving statement." Romanzi acknowledged that

he had never heard of a case wherein a police officer sold stolen property to an integrity control officer.

Romanzi requested that the charges against the Respondent be put under the category of conduct prejudicial. He acknowledged that it would be a violation of a specific Patrol Guide section for a sergeant to engage in a financial transaction with a subordinate. Romanzi testified that a supervisory officer would probably receive a CD for this type of violation, although charges and specifications were also possible "if the circumstances warrant." He agreed that there is no wording in the Patrol Guide which states that "[an officer] should have known that something was stolen." Romanzi agreed that the wording "while knowing or having reason to know that said vehicle may have been stolen" is the wording in the charge alleged against the Respondent.

Romanzi acknowledged that he wanted disciplinary action to be taken against the Respondent because he believed that an officer who purchases an ATV from someone in a dealership parking lot should know better and is exhibiting suspicious behavior. He explained that his viewpoint was evidenced by the fact that the Respondent did not have the name and address of this individual in order to return the vehicle should there be something wrong with it, he did not receive a title for the vehicle, and the VIN number was scratched off.

Romanzi stated that he had no way of being certain whether the VIN was scratched off when the Respondent purchased the vehicle, and acknowledged that Ruppel could have scratched it off after he purchased it from the Respondent. He further acknowledged that Ruppel apparently purchased the ATV without a title.

Romanzi testified that it was the viewpoint of Gomes and Francis that the case against the Respondent should be unsubstantiated. When asked what new information he came upon which caused him to overrule their decision, Romanzi replied, "There was absolutely no new information that made me overrule their decision. I don't overrule their decision. They give me their input." He added that "[i]t is not their position to make a decision. It is their position to conduct a thorough investigation and explain their viewpoints to me, which they did." When asked if Gomes and Francis appeared before the Steering Committee and gave their opinion on the Respondent's case, Romanzi responded that they did not.

Romanzi testified that the case worksheets were personally reviewed and initialed by his deputy inspector, although he acknowledged that neither the deputy inspector nor anyone else on the Steering Committee had first-hand knowledge of what happened in this case. Romanzi testified that the Steering Committee is provided with a synopsis of the case findings, which they review. When asked if he told the Steering Committee that his investigators wanted to unsubstantiate the Respondent's case, Romanzi replied that he did not. When asked if he thought it was important that the people involved in this case since its inception were of the belief that it should not go forward, Romanzi answered, "No."

Romanzi agreed that he signed an intradepartmental memorandum ("49") indicating that attorney Cynthia Halm drew up the charges and that to his knowledge this was accurate. He acknowledged that he was aware that when Halm met with Gomes and Francis, she recommended that no charges be brought against the Respondent. He stated

that it became apparent to him, at some point, that Halm had been overruled, but he had no knowledge of how that happened.

Romanzi further acknowledged that he was aware of a worksheet that indicated that the Respondent was a “very professional officer who was by the book.” When asked why this was not enough for him to give the Respondent the benefit of the doubt, Romanzi replied, “My decisions aren’t based on the benefit of a doubt.”

On questioning by the Court, Romanzi was asked if, as a result of their training, police officers know that ATVs below the size of 50cc do not require a title while ATVs above 50cc do. Romanzi responded, “[t]o the best of my knowledge, police officers are not trained on that as a matter of course of action,” and agreed that this is not common knowledge within the Department. Romanzi acknowledged that he learned this information about ATVs as a result of having investigated it and that prior to that he had been unaware of it. Romanzi agreed that Ruppel probably received the ATV from the Respondent with the VIN number already scratched off. When asked by the Court if the defaced VIN number in and of itself was not a major factor in charging the Respondent, given that the sergeant was not charged, Romanzi replied that it was “part of our decision.” When asked if he knew if the DMV would provide, upon request, information regarding its requirements for the purchase or sale of an ATV, Romanzi responded, “To the best of my knowledge, Motor Vehicle would provide that information, yes.”

On redirect examination, Romanzi was asked what decision-making process was used in determining whether the allegations against the Respondent should be substantiated. Romanzi replied, “Initially we received the case as possessing stolen property. We didn’t substantiate that, that he knowingly possessed stolen property. But

when we looked at everything surrounding his acquisition, the decision was made that, again, the circumstances surrounding that was something that a trained police officer would have known to be out of the ordinary. You are acquiring an item, high-end. Motor vehicles do have the potential to be stolen and resold, that is what we based our decision on.” Romanzi explained that by a “trained police officer” he meant a uniformed member of the Department who has attended the Police Academy and has experience patrolling and enforcing the laws and possesses knowledge of vehicle and traffic law. He testified that the Police Academy conducts auto-related training wherein recruits are instructed on where to look for vehicle identification numbers and how to identify an altered or stolen vehicle. According to Romanzi, the Department provides an Activity Log insert for vehicle identification purposes, and certain information contained in the insert points one’s attention to the locations of VIN numbers on different types of vehicles, e.g., automobiles, construction equipment, farm equipment, and motorcycles. Romanzi could not confirm whether Department training covers vehicle identification numbers on ATVs.

Romanzi testified that it was the Steering Committee’s viewpoint that Ruppel’s violation of rules and procedures did not warrant charges and specifications against him. It was also their viewpoint that a Letter of Instruction was the most appropriate form with which to address his violation in that this letter, unlike a Schedule A Command Discipline which can be expunged after one year, would remain in his personnel folder for the remainder of his career. When asked what distinguished the Respondent’s misconduct from Ruppel’s, Romanzi responded, “We were able to establish enough cause on the part of [the Respondent] to show that as the initial possessor of the vehicle,

he obtained it under circumstances which we found to be highly suspicious and should be highly suspicious to a trained police officer. Again, the circumstances on which Sergeant Ruppel obtained the ATV was that it was from someone he knew and someone he worked with, and that particular someone was a police officer, who we would expect would be transferring a legitimate item.” Romanzi maintained that the Steering Committee gave the same weight, analysis, and review to Sergeant Ruppel’s investigation as it did to the Respondent’s.

Romanzi explained that the purpose of an investigation is to obtain as much evidence, proof, and facts to either substantiate or refute allegations against a member of the Department. To his knowledge, Romanzi was unaware of there ever having been a case that was substantiated based solely on an investigator’s opinion. He testified that, generally speaking, the IAB executive staff is in agreement with their investigators, but that is not always the case. “We have to look at everything. We have to make sure that we are correct as far as issuing a disposition of substantiated.” According to Romanzi, it is not enough to make a case go forward if an investigator substantiates misconduct; at some point, he has to agree to it, sign off on it, and forward it “up the chain” where all parties must be in agreement with it. Romanzi estimated that ten to 12 people were involved in the decision-making process regarding the Respondent’s case. He stated that part of the Steering Committee process is that its members review the case and may give suggestions on further investigative steps to be taken. He further stated that when a case nears its end, it is also the members’ responsibility to provide their viewpoints on the case disposition. Romanzi and the other members of the Steering Committee, all of whom

were above him in rank, disagreed with the investigators' viewpoint that the Respondent's case was unsubstantiated.

Romanzi testified that the investigation of Sergeant Ruppel, like that of the Respondent, "...was discussed at various levels. He was part of the same case. It would not have been possible to discuss the case without discussing Sergeant Ruppel's case in the whole thing." Romanzi disagreed that a Letter of Instruction is a "slap on the wrist."

According to Romanzi, investigative team lieutenants attend the Steering Committee, and on occasion investigators will also attend. The reason the investigators would be in attendance is that a specific question has arisen pertaining to a case in which they are involved that he does not have particular knowledge of. "I can turn to them and ask them on a particulate point what they found," stated Romanzi. In the Respondent's case, Lieutenant Francis was present for at least some of the Steering Committee meetings. He explained that it is not part of the investigators' function to give an opinion at Steering Committee meetings. "They are there in case I need...to pull particular information from them on a case if I am questioned by my superiors."

On questioning by the Court, Romanzi explained that at some point in the investigation, his investigative team called an authorized dealer in all terrain vehicles and asked what the current market value of this particular ATV in average condition would be and what that value would have been at the time it was purchased by the Respondent. According to Romanzi, "It was quite a bit higher. The exact numbers I don't recall, but the actual market value was quite a bit higher than that of the value the [Respondent] paid for it." Romanzi acknowledged that his team had to do some kind of checking in order to

determine this. "We called one dealer for a price, and early in the investigation we called a separate dealer to ask them their professional opinion."

On re-cross examination, Romanzi testified that, to the best of his recollection, the dealership indicated that the type of ATV in question, in fair condition, would have a market value of \$2,200 or \$2,300. He recalled that the Respondent paid \$1,300 for it. When asked if he thought that this was such a wide disparity in price that the Respondent should have known he was purchasing something that was not a legal item, Romanzi replied that in and of itself it did not. Romanzi acknowledged that he did not know what condition the ATV was in at the time the Respondent purchased it. He further acknowledged that, based on investigative interviews and worksheets, the Respondent made repairs to the vehicle, putting \$200 to \$300 into it before selling it to Ruppel for approximately \$2,000.

Romanzi conceded that of the ten to 12 members on the Steering Committee, only he interviewed people involved in this case and determined the credibility of witnesses.

When confronted with his admission to the Court that a New York City police officer without auto crime experience would not know what the different requirements would be for an ATV, either under 50cc or over 50cc, Romanzi replied, "That would be what I would put as specialized knowledge." When asked if he would expect that the Respondent would have this knowledge when he purchased the vehicle, Romanzi answered, "I wouldn't have a reasonable expectation of that."

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent is an eight-year member of the Department currently assigned to the 79 Precinct Anti-Crime Unit where he has worked for approximately four years.

The Respondent recalled that in November of 2005, he went to a dealership in Medford, Long Island, where he looked at the prices of ATVs and discovered that the brand new ones were too expensive. The Respondent testified that as he was exiting the store, he was approached by an unidentified male who told him he had a used ATV in the back of a pickup truck in the dealership parking lot. He stated that the male asked him if he was shopping for an ATV because he had seen him looking around in the dealership. The Respondent explained to the male that he was looking for one but they were too high-priced. According to the Respondent, the male said he was going to trade his ATV for a new one, but if he were interested, he would sell it to him. The Respondent stated that they negotiated the price down to approximately \$1,400 and the male gave him directions and a phone number on a piece of paper so they could meet and complete the sale. Prior to meeting with the male, the Respondent went to the bank, withdrew the money, and following the male's directions, went to a location in [REDACTED] New York. The Respondent described the male as white, possibly Hispanic, with reddish hair, a stocky build, approximately 5'6" to 5'8." He added that the male drove a red pickup truck. According to the Respondent, after he first went to IAB about the matter he attempted to go back and find the house, but he was unable to remember street names because of their configuration. "[REDACTED], the streets are all messed up.... I couldn't figure out how to get back there. It is not main roads that you could get to," testified the Respondent.

The Respondent testified that he had previously purchased an ATV with a 50cc engine from a dealership for which he was given a credit card receipt, not a title. He indicated that he was not aware of the requirements for purchasing a vehicle with an engine size over 50cc. He denied having knowledge that such ATVs have titles and vehicle identification numbers. The Respondent indicated that he did not know if the VIN of the ATV he purchased from the male in the parking lot had been scratched off.

The Respondent stated that he kept the ATV for 5 to 6 months until he decided to sell it due to lack of use. He sold the ATV to his ICO, Sergeant Ruppel. The Respondent testified that he overheard Ruppel asking people about ATVs in the back lot of the stationhouse, and he told him that he was actually selling one. He and Ruppel discussed a price and he met with Ruppel at his house and sold him the ATV. The Respondent testified that he purchased the ATV for \$1,300 or \$1,400 and sold it to Ruppel for \$2,000 cash. He explained that the reason for the disparity in the purchase and sale prices was because he had made repairs to the vehicle. He testified that he fixed bent rims and leaking "O" ring seals and purchased and installed a new headlight, adding that he "put decent work and labor in it." The Respondent neither gave Ruppel a title for the ATV, nor did Ruppel ask for one. The Respondent was not aware that the vehicle identification number had been scratched off and acknowledged that even now he does not know where the VIN number is located on the ATV.

The Respondent testified he was approached a few months later by Ruppel, who told him that the Suffolk County Police had contacted him and informed him that the vehicle was stolen. The Respondent stated he then went to his delegate and together they went to his commanding officer, who contacted IAB and arranged for the Respondent to

speak with them. The Respondent was not ordered down to IAB by either IAB or his commanding officer. Asked why he went on his own, the Respondent explained, "Because I realized I made a mistake, and I didn't want to get the sergeant involved in something I did wrong." The Respondent testified he told IAB that he did not realize the ATV was stolen. He further testified that IAB told him they were going to call Ruppel in and see if he would come in willingly. To the Respondent's knowledge, Ruppel did not come to IAB under the same circumstances as he did. His relationship with Ruppel has changed due to the fact that the ATV he sold him turned out to be stolen. He stated that "We don't talk much now."

According to the Respondent, he underwent two official Department interviews in regard to this matter, and he maintained that his story did not change from the first interview to the second. He acknowledged that there came a point when he paid Ruppel back "[b]ecause I knew they took the [ATV] from him, and if I made the mistake, there is no reason for him to be out the money." The Respondent paid him back with two checks totaling \$2,000. [RX D and E are photocopies of two checks made payable to George Ruppel in the amounts of \$250 and \$1,750, respectively, written and signed by the Respondent.] The Respondent testified that he became aware that Ruppel had actually traded the vehicle on eBay when he went to IAB for his official Department interview.

The Respondent acknowledged that he has never received any training by the Department in the requirements of the purchase and/or sale of ATVs over 50cc. He agreed that Sergeant Ruppel, as the ICO, is the person in the precinct who metes out punishment for minor misconduct at the precinct level and consequently is aware of charges and specification and command disciplines. He denied that at any point in time

did he sell Ruppel a 2003 Suzuki LTZ 400 ATV while knowing or having reason to know that this vehicle may have been stolen. The Respondent acknowledged that he approached IAB immediately upon learning there was a problem and he promptly paid Ruppel the money back. The Respondent again denied ever having received a title for a 50cc ATV purchased from a dealership, and agreed that the only evidence of ownership was the credit car receipt that the dealership had given him.

On cross-examination, the Respondent acknowledged that in 2005 he had been a New York City police officer for approximately six years. He further acknowledged that he has received "some" auto training during his career as a police officer.

The Respondent stated that he had not previously met the individual who approached him in the dealership parking lot about the purchase of an ATV. Asked if he inspected the ATV while at the dealership, the Respondent replied, "I briefly looked at it." He explained that the reason a plan was made to meet the seller at his house was so he could make a further inspection of the vehicle, which he would then purchase if it ran satisfactorily. The Respondent acknowledged that he did not ask the seller where he acquired the ATV, nor did he ask him if he had a title or any other paperwork for it because he was not aware that any was required for ATVs. The Respondent further acknowledged that the seller did not establish proof of his ownership of the ATV, and the Respondent did not ask the seller anything about the vehicle's VIN number. He testified that he did not know that an ATV had a VIN number, even though he had purchased one before from a dealership. When asked if that vehicle (which the Respondent also purchased without a title) had a VIN number, he replied, "I wouldn't be able to tell you if it even had one.... I would have to look." The Respondent testified that the only

paperwork he received for the ATV he purchased from the dealership was a MasterCard receipt. When asked by the Court if he received a bill of sale, the Respondent replied, "No. It was just a receipt that I signed. You know how you get the duplicate copy when you sign for the real receipt? It was just a printout from the credit card machine which I still have at home." The Respondent acknowledged that he knew the dealership from which he purchased an ATV was authorized to sell such vehicles. He further acknowledged he did not know if the individual he encountered in the parking lot was authorized to sell ATVs, and he did not take any measures to establish whether or not he was authorized to do so.

According to the Respondent, the seller wrote down his information on a piece of paper and gave it to him; the next day, he went to the location and purchased the ATV. When asked if the transaction went well, the Respondent answered, "At that moment it did. Not now." He confirmed that the seller aroused no suspicions in him, even though he did not know the seller, the seller had no paperwork for the ATV, and the seller did not establish ownership of the ATV. On questioning by the Court, the Respondent testified that he went to the location of the sale, which was at the front of a house in [REDACTED] with a truck and a trailer. The seller's truck was parked in front of the house and he was there with a group of his friends. "I went there, saw the quad, test rode it up and down the block, and then we decided we are going to pay -- I can't remember if it was 13 or \$1,400. I paid him the cash, I loaded up, and that was it." He confirmed that the ATV was in "smooth" running condition at the time he test drove it.

The Respondent could not recall how long he kept the piece of paper with the seller's information on it, only that he saw no need to keep it and discarded it once he

was satisfied that the ATV was running well. He acknowledged that he had no way to contact the seller in the future if he needed to. He further acknowledged that IAB, in the course of its investigation, had no way to get in contact with the seller and had no way of investigating and verifying his account of the transaction.

The Respondent acknowledged that the brand new ATVs he looked at in the dealership were so expensive that he could not afford one and that his transaction with the individual he encountered outside the dealership offered an alternative way to purchase one. He testified that the dealership did not sell used ATVs, only new ones, and he did not know this until he was at the dealership and asked. The Respondent also did not know the prices before he went to there. He acknowledged that because he could not afford a new ATV, he considered his purchase from the seller in the parking lot to be a very good deal.

The Respondent further acknowledged that between the time he encountered the individual in the parking lot and the subsequent purchase of the ATV, he did not get the name, make, or model of the vehicle. He testified that the price was discussed in the parking lot but not set, and with a "ballpark figure" in mind he went to the bank and withdrew the money. The Respondent further testified that he went to the individual's house to inspect the ATV, test drive it, and then discuss its purchase. He confirmed that even after agreeing on a price he still did not investigate whether it was a fair price. The Respondent agreed that there came a point in time when he sold the ATV to Ruppel for \$2,000 in the form of two checks. He justified the difference in the price he paid and the sale price to Ruppel by the time and labor he put into making repairs to the vehicle.

The Respondent acknowledged that he subsequently learned from Ruppel that Suffolk County was conducting an investigation into the report of a stolen ATV. He denied that he first notified and then went to IAB voluntarily in order to “jump the gun on things” because he knew IAB would be coming to speak to him. “Patrol Guide procedure states we have to notify [IAB] if we get involved in something like this,” the Respondent testified. He further denied that he returned the money to Ruppel in order to make things appear in his favor. He stated that he “wouldn’t short out a friend,” and acknowledged that he paid Ruppel back to make amends for selling him a stolen item. He testified that his relationship with Ruppel was one of casual friendship and that they did not fraternize outside of work.

The Respondent testified that it was “not going to serve me any purpose in purchasing the ATV” to inquire of the seller the vehicle’s background, how he acquired it, and why he was selling it. He denied ever having had Department training regarding ATVs or knowledge that such vehicles had unique identification numbers.

FINDINGS AND ANALYSIS

The Respondent is charged with conduct prejudicial to the good order, efficiency, or discipline of the Department in that he sold a 2003 Suzuki LTZ 400 ATV while knowing, or having reason to know, that said vehicle may have been stolen. I find the Respondent Not Guilty because the evidence presented during this Departmental trial does not support a finding that the Respondent knew or had reason to know that the ATV he purchased *may have been stolen* (emphasis added).

The Respondent received the charges in this case because he purchased an ATV for \$1,300 (possibly \$1,400) from a male who approached him in the parking lot of an ATV dealership and after making repairs on it he sold it for \$2,000 to his ICO, Sergeant Ruppel. Ruppel then listed the ATV on eBay where he traded it for another ATV. While it was listed on eBay, however, a Mr. [REDACTED] saw the vehicle and realized it was the one that was stolen from him. An investigation by the Suffolk County Police Department and the NYPD led them to Ruppel and ultimately to the Respondent.

The Department's investigation was initially conducted by IAB investigator, Sergeant Gomes. Gomes interviewed Suffolk County Detective Cook, [REDACTED], the Respondent and Ruppel. Gomes noted that the Respondent voluntarily made himself available for the first of his two interviews. The Respondent told Gomes (and this Court) that he was interested in buying an ATV and went to a dealership to purchase one. When he realized the prices were too high he left the dealership and as he was walking in the parking lot he was approached by the male who offered to sell him the ATV he had in his pickup truck. They agreed to meet on another day and the Respondent wrote down the male's name and directions to his home in [REDACTED] New York, where he would complete the sale for the vehicle.

Subsequent to withdrawing money from his bank, the Respondent went to the male's address and after a further inspection of the ATV, purchased it. The Respondent did not receive a bill of sale, receipt or title to the vehicle because he did not know or believe that he needed to have those documents. His understanding regarding documents for ATV's stemmed from his experience when he previously purchased an ATV from a dealership where the only documents he received was the credit card receipt; he did not

receive a bill of sale or a title. The engine size of that ATV was 50cc. The engine size of the ATV he bought from the male was 400cc.

Sometime after the purchase of the ATV in this case, the Respondent discarded the paper with the directions to the male's home. Consequently, Gomes was not able to contact the male because the Respondent could not remember the directions to the male's house. Several months after the purchase and after making repairs to the vehicle, the Respondent decided that he did not want to keep the ATV because he was not using it and opted to purchase a motorcycle. He then sold the ATV to Ruppel for \$2,000.

At one point during his investigation, Gomes and his team decided they needed to learn more about the requirements for the sale of ATVs. Gomes contacted the Department's Auto Crime Division and a Suzuki dealership about the paperwork required for the sale and purchase of an ATV. He also spoke to an investigator from the New York State Department of Motor Vehicles (DMV). From these inquiries he learned that any purchase of an ATV with an engine size over 50cc required a title. A purchase of an ATV of 50cc or less required no paperwork and, as Gomes acknowledged, was the equivalent of purchasing a bicycle. An ATV with a 400cc engine, in contrast, would have a title attached to it at the time of purchase. Gomes also learned from his contacts with the DMV that the purchase of an ATV without a title "in and of itself" is "not illegal" and there was no requirement to register an ATV. He was further informed that the DMV does not keep track of the existence or absence of a title.

Gomes also learned that all ATV's are required to have vehicle identification numbers (VINs). He was informed by Suffolk County Auto Crime that the Respondent's ATV did not have a VIN and when he went to the auto pound in Suffolk County to

inspect the vehicle he was shown the location on the frame where the VIN should have been and observed that the area in question “was scratched.” He questioned the Respondent about the ATV’s lack of a VIN, and was told that he had never seen a VIN number on the vehicle. The Respondent explained that he did not believe that a registration and a VIN number were required on the ATV because it is an “off-road” vehicle.

As a result of his investigation Gomes and his supervisor, Lieutenant Francis, concurred that no charges should be brought in this case because no incriminating evidence against the Respondent had been found. Gomes also reminded the Court that Sergeant Ruppel, who purchased that same ATV, with the scratched off VIN, no title and no bill of sale received only a “Letter of Instruction” in his file which Gomes noted is a less severe form of disciplinary action than a Command Discipline.

Captain Romanzi, as Commanding Officer of Group 31, supervised the investigation conducted by Gomes and Frances and was personally involved in the investigation of the Respondent’s purchase of the ATV. He considered the allegation against the Respondent serious in nature and therefore disagreed with Gomes’ and Francis’ conclusion that there was no incriminating evidence against him. His reasoning was that the purchase “had the potential to be a felony in that stolen merchandise was acquired and then disposed of, and I consider that to be serious.” Romanzi conceded, however, that he did not know beyond a reasonable doubt that the Respondent knowingly possessed stolen property and the Suffolk County District Attorney’s office declined to seek an arrest in the case due to a lack of evidence.

Romanzi nevertheless presented the Respondent's case to the IAB's Steering Committee three times and it was determined that disciplinary action was warranted because the Respondent's purchase of the ATV "led us to the conclusion that it was acquired under circumstances which a trained police officer would consider illegitimate and suspicious." Romanzi and the Steering Committee, while concluding that the Respondent's conduct did not rise to the level of "knowingly possessing stolen property" still considered it "apparent" that the Respondent should have known he was involved in a suspicious or illegitimate transaction. The punishment decided upon for this infraction was a Schedule B Command Discipline with a forfeiture of 10 vacation days. The Respondent declined the offer and elected to face charges at a Departmental trial.

What is noteworthy to this Court is that Romanzi, in advocating the Respondent's guilt, places a great deal of emphasis on the notion that the Respondent should have known⁶ that he was making a suspicious and illegitimate purchase of the ATV because he is a trained police officer with experience of being on patrol and enforcing laws along with the auto-related training he received in the Police Academy. In fact when he was directly asked if the reason he overruled Gomes and Francis was because he believed that the Respondent should have known better, he replied "To put it succinctly, yes."

According to Romanzi, the suspicious nature of the purchase is that the Respondent bought the vehicle without getting a title or a bill of sale. He also purchased the vehicle with the VIN scratched off.

Romanzi's argument, however, loses its validity when it became apparent that he, an experienced IAB investigator, needed to reach out to experts with specific knowledge

⁶ Romanzi acknowledged that there is no wording in the Patrol Guide which states that an officer should have known something was stolen.

of ATVs to help him become familiar with the vehicle. After admitting that police officers are not trained to know that ATVs of 50cc or less do not require titles, and those above 50cc do require one, he informed the Court that he consulted, as Gomes did, with an authorized dealer and determined that the ATV was purchased at a rate far below the market value and without benefit of a title or bill of sale. He then learned from a senior investigator from the DMV that the purchase or sale of any ATV without a title is not in and of itself a crime. The title is more or less the bill of sale and there is no requirement for an owner to register an ATV. He further learned that because an ATV is an off-road vehicle, the DMV does not track the absence or existence of a title. Even [REDACTED] the male that Ruppel traded the ATV to was quoted in an investigative worksheet as stating that it was not uncommon for ATV owners not to have a title.

Romanzi also consulted with trained auto crime experts from Middlesex County and Suffolk County Auto Crime to learn that the VIN had been defaced on the vehicle. This is especially noteworthy because he thought it suspicious that the Respondent was not aware that the VIN had been scratched off; yet Romanzi needed professional guidance to determine that fact. It is also of interest to this Court that Romanzi admitted that he had no way of knowing whether the VIN on the ATV was scratched off when the Respondent purchased it or if Ruppel scratched it off after he purchased it from the Respondent.

Romanzi further found evidence of the Respondent's guilt where he thought it was "suspicious" that the Respondent failed to produce the paper with the name and address of the male who sold him the vehicle because Romanzi believed that if one

existed the Respondent should have kept it in the event that he needed to reach the individual in case he had to return the vehicle should there be something wrong with it. This Court, however, does not find it suspicious that he did not have the paper because as the Respondent explained during his plausible testimony that while he could not recall how long he kept the piece of paper with the seller's information on it, he saw no need to keep it and discarded it once he was satisfied that the ATV was running well. It should also be noted that when the investigation began the Respondent no longer owned the ATV, and therefore it should not be deemed suspicious that he did not retain that slip of paper.

Romanzi also found it necessary to consult with an authorized dealer of ATVs to determine what the current market value of a similar ATV in average condition would be. The dealership informed him that the type of ATV in question, in fair condition, would have a market value of \$2,200 or \$2,300. While the Respondent paid \$1,300 (or \$1,400) for the one he purchased Romanzi did not believe that the disparity in price should have, in and of itself, been an indicator to the Respondent that he was entering into something that was not legal. In addition, Romanzi did not know what condition the ATV was in at the time the Respondent purchased it and based on the investigation he knew that the Respondent made repairs to the vehicle, putting \$200 to \$300 into it before selling it to Ruppel for approximately \$2,000.

Romanzi's arguments in favor of the Respondent's guilt are also challenged by the fact that he did not hold Ruppel to at least the same standards that he placed on the Respondent. When Ruppel bought the same ATV from the Respondent he did so without a title, without a bill of sale and with the VIN scratched off. Romanzi justifies not taking

the same action against Ruppel because “it was our position that he (Ruppel) had a reasonable expectation that the item was a legitimate item not being stolen since he was acquiring it from a police officer.” What Romanzi fails to consider in this case is that Ruppel is the Respondent’s Integrity Control Officer and as such should not be allowed to have a “reasonable expectation” that any conduct by his officers is legitimate because it is his job to question their conduct to ensure that they are comporting themselves legitimately and with integrity. To remove that responsibility from him is in essence telling him not to do his job. It may be likely that Ruppel did not investigate his purchase of the ATV to the standards demanded by Romanzi because being a superior officer of the Respondent he was not permitted under the Patrol Guide to enter into financial transactions with him. For that blatant violation of the Patrol Guide he received only a Letter of Instruction in his file. He was not disciplined for the purchase of the ATV.

Given the circumstances surrounding his purchase of the ATV, the Respondent may have exercised poor judgment, inasmuch as he is a police officer and higher powers of observation, perception and discernment are expected of him than he displayed in this matter. And in making such a choice he put into play an incident which ultimately proved to be an embarrassment to himself and the Department.

The Department, however, presented no convincing evidence that the Respondent actually knew that the ATV was stolen, and both the primary investigators in this case, Gomes and Francis, recommended that charges should not be brought against the Respondent. It also strains credulity that the Respondent, had he known the ATV was stolen, would then have gone ahead and sold it to his integrity control officer, who was also someone whom he considered a friend.

This Court wants to also make it perfectly clear that it realizes and appreciates the fact that Romanzi, in supervising this investigation, gave serious time and effort in formulating his thoughts about this case which undoubtedly resulted in the revelation of several plausible elements in support of a finding against the Respondent. But this Court requires more concrete evidence to support even the vague allegation that the Respondent *should have known* that the ATV *may have been stolen* (emphasis added).

Accordingly, the Respondent is found Not Guilty as charged.

Respectfully submitted,

Martin & Karo L for J.C.

John Grappone

Assistant Deputy Commissioner - Trials

APPROVED

MAY 19 2008
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER