



POLICE DEPARTMENT

July 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Caparelli
Tax Registry No. 930334
Police Service Area 4
Disciplinary Case No. 2013-9304

The above-named member of the Department appeared before me on May 2, 2014, December 18, 2014¹ and May 26, 2015, charged with the following:

1. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 4, 2013, while on-duty and in Bronx County, was absent from his assigned post without permission or police necessity.

P.G. 202-21, Page 1, Paragraph 20 - POLICE OFFICER

2. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 4, 2013, while on-duty and in Bronx County, acted discourteous to Sergeant Alexandru Anghel, to wit, Police Officer Caparelli raised his hands and stated, in a loud and confrontational manner, in sum and substance, "This is personal."

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

3. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 4, 2013, while on-duty and in Bronx County, failed to make complete Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1 - ACTIVITY LOGS.

4. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 12, 2013, while on-duty, reported to the Employee Management Division approximately 45 minutes late for a meeting with Inspector Donna Jones in which said Police Officer was directed to appear at 1100 hours.

¹ The first and second day of trial Respondent appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster.

P.G. 203-03, Page 1, Paragraph 2 & 3 - COMPLIANCE WITH ORDERS

5. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 13, 2013, while on-duty and in Bronx County, modified his uniform without authorization, to wit: Police Officer Caparelli wore an unauthorized sweatshirt and failed to have on a uniform, regulation long sleeve shirt.

P.G. 204-01, Page 1, Paragraph 2 - GENERAL REGULATIONS

6. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about February 26, 2013, while on-duty, at or near the 42nd Precinct station house, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Caparelli removed a partially filled iced coffee cup from inside a Department vehicle and threw the cup, causing it to land in a decorative planter in front of the 42nd Precinct stationhouse.

**P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT
PROHIBITED CONDUCT**

7. Police Officer Daniel Caparelli, assigned to the 120th Precinct, on or about March 14, 2013, while on-duty and in Bronx County, failed to make complete and/or contemporaneous Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1 – ACTIVITY LOGS

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

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

Respondent is found Guilty of Specifications 1, 2, 3, 4, 5 (in part), and 6.

Respondent is found Not Guilty of Specification 7.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Captain Edward Edwards, Lieutenant Luis Montalvo, Lieutenant Kamala Bailey, Lieutenant Thomas Devine and Sergeant Alexandru Anghel as witnesses.

Respondent's Case

Respondent testified on his own behalf.

FINDINGS AND ANALYSIS

Specifications 1, 2, and 3 – Respondent is charged with being absent from his post, being confrontational and discourteous to Sergeant Anghel, and failing to make complete Activity Log entries on February 4, 2013. On that date, Respondent was assigned to a shooting reduction foot post on Prospect Avenue between 168th and 169th Streets in the 42 Precinct. Sergeant Anghel testified that at roll call that evening, he assigned Respondent meal at 9:00 PM. (Tr. p. 92). He further testified that at 10:42 PM when he observed Respondent in a police van about three blocks away from his assigned post and questioned him, Respondent told him he was on meal. (Tr. p. 93). Anghel stated he then asked Respondent for his memo book and Respondent became irate and said, "This is personal." (Tr. pp. 94-95). The memo book did not contain a post description, color of the day, return date, meal time or entry for leaving his post. (Tr. p. 96, Dept. Ex. 5).

Respondent testified that he was off post and was on meal at the time Sergeant Anghel asked for his memo book. He explained that a Detective had told him the desk supervisor had authorized an exchange of meal times between the Detective and

Respondent. (Tr. p. 160). Respondent admitted he said, in a moderate tone, "This is personal," because he felt Anghel was personally attacking him. (Tr. pp. 161-63).

Based on Respondent's admissions, I find that Respondent was absent from his assigned post and did fail to make required memo book entries, and is therefore Guilty of Specifications 1 and 3.

With regard to Specification 2, I find Anghel credible that Respondent was very upset about spoken to about having an improper memo book and being off post. Anghel described Respondent as having "created a scene in the street in front of other officers and people." (Tr. p. 97). While Respondent may have been upset if he felt he was being singled out for discipline, it was inappropriate to express that to a superior officer in the manner that Respondent did so. I therefore find Respondent Guilty of Specification 2.

Specification 4 – This specification charges Respondent with arriving approximately 45 minutes late for a meeting with an Inspector. There is no dispute that Respondent was notified to meet with then-Inspector Jones at the Performance Monitoring Unit at 11:00 AM on February 12, 2013 and that Respondent arrived at 11:45 AM. Lieutenant Bailey testified that she was told by a desk officer at the 42 Precinct that Respondent came to the desk at 10:00 AM at the start of his tour on February 12, 2013, and was told to leave the command to report to the meeting and that there was no vehicle available to transport him. (Tr. pp. 40-41). Bailey further testified that she heard Respondent say he had been waiting for a car. (Tr. p. 39). Respondent testified that upon receiving the instruction to report to the meeting and learning there was no car available to take him, he proceeded to walk to the subway and take the subway downtown. (Tr. p. 168). Respondent by his admission was late for the meeting. While it may have been difficult to

travel by public transportation from the 42 Precinct in the Bronx to an office at One Police Plaza in one hour, Respondent failed to arrive until an hour and 45 minutes after he had been given the directive to report to the meeting. I therefore find that Respondent is Guilty of Specification 4.

Specification 5 – Respondent is charged with wearing an unauthorized sweatshirt and not wearing his regulation long sleeve shirt. It is undisputed that on February 13, 2013, Respondent was assigned to a shooting reduction post, on foot, at approximately 9:30 PM. Respondent was wearing a black fleece under his uniform duty jacket. Respondent said he was wearing it due to the weather at that time. (Tr. p. 171). Respondent also testified that he was wearing the standard winter uniform turtle neck, duty jacket and cap. (Tr. p. 170). Captain Edwards testified that when he went to inspect the post, he could see the fleece under Respondent's duty jacket and added that Respondent was also not wearing the required Department long sleeve shirt. (Tr. pp. 12-13). Edwards stated it is important for Police Officers on foot posts to wear the authorized uniform so they are readily identifiable by the public. (Tr. p. 14). Edwards acknowledged that Respondent would not have been mistaken for anything other than a police officer and also that the wearing of the fleece under the duty jacket in no way hindered Respondent's ability to do his job on the shooting reduction post. (Tr. p. 17).

I find Respondent Guilty in part of Specification 5 for wearing the unauthorized fleece. While it may well have been cold outside, there were other clothing options such as long underwear or the quilted vest noted in P.G. 204-04, which Respondent could have worn rather than the unauthorized fleece. However, in P.G. 204-04, it is noted that the turtle neck shirt shall not be used as an outer garment but may be worn under the duty

jacket. I credit Respondent's testimony that he was wearing his uniform turtle neck and therefore Respondent's failure to have on a uniform shirt was not a violation of P.G. 204-01.

Specification 6 – Respondent is charged with throwing a coffee cup. Respondent admitted in his direct testimony that on February 26, 2013, while on-duty, he removed a partially filled iced coffee cup from inside a Department vehicle and threw the cup into the large decorative planter in front of the 42 Precinct stationhouse. (Tr. p. 176). While Respondent has argued that he was being unfairly singled out for discipline, there is no evidence to support this claim. (Tr. p 184). Accordingly, I find Respondent Guilty of Specification 6.

Specification 7 – Respondent is charged with failing to make Activity Log entries. Lieutenant Montalvo was working as the Platoon Command supervisor on March 13, 2013. Respondent was assigned to a foot post near 169th St and Washington Avenue. Montalvo testified that at approximately 9:55 PM, he visited Respondent's post and did not find Respondent there. About five minutes later Respondent exited a store and reappeared at his post. In response to a question, Respondent told Montalvo he was on a personal in the store. Montalvo inspected Respondent's memo book and there was no indication in the memo book that Respondent was on a personal. (Tr. pp. 20-21, Dept. Ex. 1). Respondent testified that he had not taken any police action during his time on the foot post. (Tr. p. 191). He stated he went into the store at approximately 9:55 PM to use the restroom. (Tr. p 196).

In this Specification, Respondent is charged with violating P.G. 212-08, Page 1, Paragraph 1. This requires uniformed members of the service to record certain actions

"chronologically," including, "Absences from post/sector or place of assignment." There is no indication of how quickly the entry must be made, or that the entry for a personal must be made before the officer takes that personal; rather only that entries be made chronologically. In this case, Respondent's Activity Log was inspected within five minutes of when he began the personal and since there is no requirement that the entry be made before the personal begins, I find Respondent Not Guilty of this Specification.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

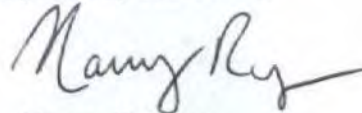
The Department Advocate requested a penalty of the forfeiture of 30 vacation days.

Respondent has been found guilty of discourteously raising his hands and telling a sergeant in a loud and confrontational manner, "This is personal." Acts of discourtesy against a supervisor have consistently called for a penalty of at least ten vacation days. See *Disciplinary Case No. 2010-2021* (Feb. 19, 2013), in which a fifteen-year police officer with no prior disciplinary record forfeited ten vacation days for being discourteous to his sergeant in the roll call room in front of fellow members of the service; *Disciplinary Case No. 2011-3646* (Jun. 6 2013), in which a sixteen-year police officer with no prior disciplinary record forfeited ten vacation days for discourteously making comments during roll call after the lieutenant conducting roll call repeatedly requested that he remain silent;

Disciplinary Case No. 2013-10510 (Mar. 26, 2015), in which a seven-year police officer with no prior disciplinary record forfeited ten vacation days for discourteously speaking to a sergeant in a loud tone and not allowing the sergeant to speak.

In the current case, Respondent has also been found guilty of wearing an unauthorized sweatshirt while on duty in uniform, being absent from his post (which was a shooting reduction post), failing to make Activity Log entries, being late to a meeting with an Inspector, and removing a cup of iced coffee from a Department vehicle and throwing it, causing it to land in a decorative planter in front of the station house. Accordingly, it is recommended that he forfeit a penalty of 20 vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

NOV 20 2015


WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL CAPARELLI
TAX REGISTRY NO. 930334
DISCIPLINARY CASE NO. 2013-9304

In 2014, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.0 "Competent" in 2012 and 2013. He has been awarded seven medals for Excellent Police Duty. [REDACTED]
[REDACTED] He has been on Level II Discipline Monitoring since February 2013. He has no prior formal disciplinary record.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner Trials