



POLICE DEPARTMENT CITY OF NEW YORK

January 11, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Christopher McDonald  
Tax Registry No. 947240  
Manhattan Court Section  
Disciplinary Case No. 2016-15133  
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**Charges and Specifications:**

1. Said Police Officer Christopher McDonald, while assigned to the 67th Precinct, while off-duty, on or about September 4, 2015, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said police officer improperly displayed his holstered firearm to an individual during a verbal dispute without police necessity.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Police Officer Christopher McDonald, while assigned to the 67th Precinct, while off-duty, on or about September 4, 2015, in [REDACTED], New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said police officer provided misleading and inaccurate statements to Queens South Duty Captain John Ganley during the initial investigation of an off-duty incident involving said police officer.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

**Appearances:**

For the Department: Javier R. Seymore, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

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

**Hearing Date:**

December 8, 2016

**Decision:**

Guilty

**Trial Commissioner:**

DCT Rosemarie Maldonado

**REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on December 8, 2016. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

**DECISION**

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

**SUMMARY OF EVIDENCE IN MITIGATION**

The underlying facts of this matter are not in dispute. While off-duty on September 4, 2015, Respondent, a police officer from the Anti-Crime Unit of the 67<sup>th</sup> Precinct, went to a bar [REDACTED]. (Tr. 6-7, 9, 17-19) His wife and friends accompanied him there for approximately fifty-five minutes to celebrate her birthday. As they began to exit the establishment, Respondent's wife bumped into a woman and an argument ensued. (Tr. 9-10, 13, 20-21) According to Respondent, he tried to deescalate the matter by apologizing and offering to buy the women another drink. (Tr. 20-21) The woman, however, continued to argue, threatened to shoot, and grabbed her purse. (Tr. 22-23) In response, Respondent informed her that

he was a police officer and lifted his shirt to reveal his off-duty firearm and his NYPD shield. (Tr. 4, 11-12, 14, 21)

Respondent and his wife continued to the exit but were stopped by security guards who asked if Respondent was carrying a firearm. He answered in the affirmative and explained that he was a police officer. (Tr. 13-14) The security guards nonetheless detained Respondent and called 911. (Tr. 4, 14) When officers [REDACTED] arrived, Respondent handed over his loaded firearm and explained the situation. (Tr. 4, 14-15, 23) The officers transported Respondent and his wife home and returned his firearm. (Tr. 4, 15, 16)

Respondent notified Operations about the off-duty incident and was informed that the Duty Captain would come to his residence. (Tr. 16, 23) Respondent waited approximately two and a half hours and spoke to a union delegate. (Tr. 13, 24, 33) When Captain John Ganley arrived, he asked whether Respondent had been drinking and whether he had been carrying a firearm. Respondent answered no to both questions. (Tr. 4, 16, 17, 24) At his Department interview on October 29, 2015, Respondent retracted these statements by revealing that he had consumed two beers and by admitting that he had carried a firearm the night of the incident. (Tr. 17-18, 24)

### PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has asked the tribunal to impose a penalty of the loss of thirty-five (35) vacation days. Respondent's counsel maintains that this penalty is excessive given Respondent's employment record and the circumstances surrounding the misconduct. Counsel argued at trial that because Respondent has been a "shining exemplar for the City of New York," the penalty imposed should be no more than fifteen vacation days.

In support of a reduced penalty, Respondent admitted to a momentary lapse of good judgment, both when he displayed his firearm and when he made inaccurate statements to Captain Ganley. (Tr. 17, 27- 29) With respect to Specification 1, Respondent noted that he attempted to defuse the dispute and that his aim in lifting his shirt was to display his shield to confirm that he was a police officer. In short, on direct examination, Respondent attempted to convince this tribunal that displaying his firearm was not intentional, but incidental, because his shield was on his waistband in close proximity to his firearm. This argument was unconvincing. The following exchange during cross-examination is telling of Respondent's true intent:

- Q. And at what point did you feel the need—it was necessary for you to show your shield and your firearm to these young ladies?
- A. When she threatened to—when she called her—when she threatened to shoot me and my wife...
- Q. At that point did you think it was a police necessity to put her on notice that you were a police officer and that you had a firearm?
- A. Yes. (Tr. 21)

Accordingly, I find that Respondent failed to present credible evidence to support mitigation of this penalty.<sup>1</sup>

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<sup>1</sup> In support of its penalty recommendation, the Department Advocate cites to *Disciplinary Case No. 2013-8832* (July 22, 2014) (seven-year police officer with no disciplinary record forfeited thirty (30) pre-trial suspension days for engaging in an off-duty verbal dispute and physical altercation involving the display of his firearm) and *Disciplinary Case No. 2012-7492* (May 1, 2015) (five-year police officer forfeited thirty (30) vacation days for engaging in a physical altercation with a motorist involving the display of his

With regard to Specification 2, Respondent claimed that he denied ingesting alcohol and carrying a firearm when he spoke to the duty captain because he became nervous during a three hour wait. In this tribunal's estimation, however, nervousness alone is insufficient to mitigate a penalty for making the self-serving statements at issue here. At issue were not the type of details that can be easily misperceived under stress, such as distance, passage of time or the exact words used during an argument. Here, Respondent inaccurately denied ingesting alcohol and being armed at the time of the incident – facts less likely to be susceptible to unintended mistake and thus, mitigation. *See Disciplinary Case No. 2015-13392* (December 22, 2015) (eighteen-year sergeant, with one prior adjudication, forfeited fifteen (15) vacation days for making misleading statements to the duty captain regarding the investigation against him with ACS).

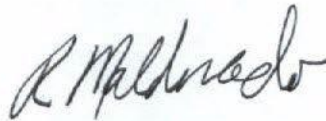
In making this finding, I must also acknowledge that it is uncontested that Respondent corrected his misstatements when he testified at his October 29, 2015, Department interview. It was there that he was forthcoming about consuming two beers and carrying a firearm during the incident. This tribunal has noted “that there is a qualitative difference between false statements made on the spur of the moment by an off-duty MOS who is being questioned by an on-duty MOS who has responded to his home, and false statements made by an MOS under oath during a civil, administrative or criminal proceeding, or during an official Department interview, because at a Patrol Guide 206-13 interview the MOS has received prior notice as to what he will be questioned about and because the MOS is represented by counsel.” *Disciplinary Case No. 2008-84501* (August 12, 2009). Although this tribunal aims to deter officers from

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firearm without police necessity). (Tr. 35) It should be noted, however, that both cases involved the additional misconduct of an actual physical altercation.

making misleading statements to their superiors, it is also important to recognize when an officer voluntarily corrects any misstatement. Accordingly, I recommend that Respondent's penalty be the forfeiture of thirty (30) vacation days. It is the tribunal's belief that this penalty reasonably and fairly addresses Respondent's improper display of a holstered firearm and his subsequent misleading statements.

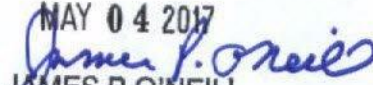
Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner Trials

**APPROVED**

MAY 04 2017



JAMES P. O'NEILL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER CHRISTOPHER MCDONALD  
TAX REGISTRY NO. 947240  
DISCIPLINARY CASE NO. 2016-15133

Respondent was appointed to the Department on July 8, 2008. On his last three annual performance evaluations, he received 4.5 overall ratings of "Highly Competent/Extremely Competent" for 2013, 2014 and 2015. He has received two medals for Excellent Police Duty and nine medals for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history. In connection with the instant matter, he was placed on Modified Duty from September 4, 2015 to May 2, 2016. He was also placed on Level 1 Discipline Monitoring on March 23, 2016. That monitoring remains ongoing.

For your consideration.

Rosemarie Maldonado  
Deputy Commissioner Trials