



POLICE DEPARTMENT CITY OF NEW YORK

July 18, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Sharon Ramirez
Tax Registry No. 949525
67 Precinct
Disciplinary Case No. 2015-13870

Charges and Specifications:

1. Said Police Officer Sharon Ramirez, while assigned to the 67th Precinct, on or about October 25, 2014, while on duty did fail to comply with a lawful order, to wit: Sergeant Kamilla Williams ordered said officer to resume patrol and she failed to do so.
P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT
P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS
2. Said Police Officer Sharon Ramirez, while assigned to the 67th Precinct, on or about October 25, 2014, while on duty was discourteous to Sergeant Kamilla Williams, to wit: said officer demanded to be reassigned to another RMP, pointed her finger at Sergeant Williams and stated in sum and substance, "Would you take this car and bring bed bugs into your home, I'm not gonna take this car."
P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT
P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS
3. Said Police Officer Sharon Ramirez, while assigned to the 67th Precinct, on or about October 25, 2014, while on duty did fail to wear the prescribed uniform as required, to wit said officer did not wear a tie with her uniform.
P.G. 204-02, Page 1 - UNIFORM CLASSIFICATIONS

Appearances:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

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

Hearing Dates:

May 17 and 26, 2016

Decision:

Not Guilty (all counts)

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 17 and 26, 2016. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Kamilla Williams, Sergeant Junmei Zhang, Lieutenant Daniel Sarrubbo, and Officer Robert Cascalenda as witnesses. Respondent called Officer Jonathan Cruz as a witness, and Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent not guilty of the charged misconduct.

FINDINGS AND ANALYSIS

On October 25, 2014 Respondent was working a midnight tour at the 67th Precinct in Brooklyn. Respondent was assigned RMP No. 5694 for patrol; that vehicle had recently been treated for a bed bug problem. Early in her tour, Respondent claimed to have seen several bed bugs inside the vehicle, returned to the precinct, and requested a different car. At issue is whether Respondent did fail to comply with a lawful order from the desk officer, Sergeant Kamilla Williams, to resume patrol with the same RMP, and whether Respondent was

discourteous to the sergeant in expressing her objection to using the vehicle. Also at issue is whether Respondent was not wearing her tie, in violation of the uniform requirements of section 204-02 of the patrol guide.

Sergeant Williams testified that Respondent approached her after the roll call to ask for a different vehicle because of the bed hug problem inside RMP 5694; Respondent told her that she saw bed hugs "jumping in the back seat." (Tr. 14, 19) Sergeant Williams said that she'd look into the matter and try to replace the vehicle if possible. However, the sergeant learned that there were no other cars available, and this particular RMP was not "out of service", as it had recently been fumigated and used by at least the previous five tours. (Tr. 15-16, 22) The sergeant, who could not recall whether she inspected the car herself, told Respondent that she would have to resume patrol with that vehicle, and if another RMP became available later she could switch. (Tr. 16, 44)

According to Sergeant Williams, about 40-60 minutes later she noticed Respondent's partner, Officer Robert Cascalenda, in the LAPS office inside the precinct. Officer Cascalenda informed her that he and his partner were waiting for another car. The sergeant requested that Respondent be called to the desk, and asked her why she wasn't out on patrol. Sergeant Williams testified that Respondent became argumentative and combative in insisting that she would not use RMP 5694. The sergeant ordered Respondent to take the car and go out on patrol, but Respondent refused, pointed her finger at the sergeant, and replied, "Would you take this car? Would you take that -- would you take this to your family?" The sergeant claimed that Respondent was loud, and there were a lot of people inside the precinct at the time. (Tr. 17-18) Sergeant Williams informed Respondent that she was refusing a lawful order, but Respondent

disagreed, stating that it wasn't a lawful order. The sergeant also noted that Respondent was not wearing her uniform tie, which Respondent explained was in her locker. (Tr. 18)

Sergeant Junmei Zhang testified that on the day of the incident he was the precinct's Impact sergeant. According to Sergeant Zhang, Respondent approached him between 1215 and 1230 hours to complain about bed bugs in the RMP. The sergeant told her that he had been informed by other officers that the car had been cleaned by the Department, and that the RMP had since been used by the previous tours. Respondent maintained that she did not want to use the vehicle, but the sergeant told her that she needed either to find another car or stick with the one to which she was assigned. (Tr. 65-66) Sergeant Zhang did not give her a time limit on how long she could take to find another vehicle. (Tr. 74) Although he did not enter RMP 5694 to inspect it himself, Sergeant Zhang described the interior front seats as covered in plastic because the seats were not completely dry, as depicted by two photographs in evidence (Resp. Exs. B and C). Several hours later in his shift, the sergeant observed Respondent inside a different vehicle. (Tr. 67-68, 73-74)

Lieutenant Daniel Sarrubbo, who was the precinct's integrity control officer, testified that after the incident, he had a telephone conversation with Officer Peter Daly, who no longer is with the Department. Officer Daly was the precinct's RMP coordinator as of October 25, 2014. According to Lieutenant Sarrubbo, Officer Daly told him that about a week before the incident, an Officer Modesto had complained about a bug inside RMP 5694. Officer Daly inspected the vehicle and did not see any bugs. Nevertheless, he reached out to the Fleet Services Division to find out if the RMP could be fumigated. When he was told that the car could not be fumigated, Officer Daly purchased a can of BASF 221L, an insecticide, and sprayed the interior of the vehicle. Several days later, Officer Daly again inspected the RMP and did not see any bugs. (Tr.

85) Lieutenant Sarrubbo did not, himself, ever inspect the vehicle, and was unaware whether there was a posting in the car which warned that it had been sprayed with an insecticide. (Tr. 87-88)

Officer Robert Cascalenda testified that he and Respondent, who were partners at the time of the incident, were assigned to RMP 5694. According to Officer Cascalenda, he and Respondent were in their patrol car, roughly an hour or two into their tour, when Respondent told him that she saw bugs inside their RMP and wanted to get a new car. Officer Cascalenda did not see the bugs himself, but did see Respondent, in the front passenger seat, "swatting all around like there was something crawling on her." He also was aware of rumors around the command that the RMP was infested. (Tr. 96-97, 99, 104)

Back at the precinct, Officer Cascalenda spoke with Sergeant Williams about getting another car, but the sergeant told him there were no cars available and they needed to resume patrol. (Tr. 98) Officer Cascalenda testified that Respondent and the sergeant then had a conversation in which both parties appeared agitated; he did not recall what specifically was said, but noted that they seemed upset with one another. (Tr. 99-100) Officer Cascalenda went to find the union delegate, who, within 15-20 minutes, arranged for the officers to use another RMP. (Tr. 100) He also recalled seeing Respondent take off her tie to wash it because she thought there were bugs on it. (Tr. 102)

Officer Jonathan Cruz, Respondent's PBA delegate, testified that as he was working in the precinct the night of the incident he observed Respondent and Sergeant Williams having a conversation. The sergeant was telling Respondent that there were no other cars available and she needed to go back out on patrol. Respondent asked the sergeant whether she would put herself in that position. Officer Cruz, who was aware of a rumored bed bug infestation inside

RMP 5694, suggested to the sergeant that there might be another vehicle available: RMP 5111 had a flat tire, but otherwise was operational. Officer Cruz testified that he gave Respondent and her partner the keys and told them to take the vehicle to a repair shop a block away, which they did. From the time Officer Cruz made the suggestion regarding RMP 5111 until the time where Respondent and her partner returned with the car fully operational, no more than 25-30 minutes had elapsed. Officer Cascalenda was reimbursed for the cost of the tire. (Tr. 111, 114-115) Officer Cruz never went inside RMP 5694 and did not see any bed bugs. (Tr. 118-119)

Respondent testified that she was working a midnight tour and was assigned RMP 5694, which had plastic covering the front seats and a "dingy toxic odor." She and her partner responded to a job, and as they returned to their RMP, she shined her flashlight on the back seat before placing her hat on the seat. According to Respondent, she observed two bed bugs jump into the hole of the seatbelt buckle. She told her partner what she had seen, and that they needed to go back to the precinct. As they approached the precinct, Respondent saw a third "red, little baby bed bug" on her tie. (Tr. 123-125, 127, 137, 140-141)

After exiting the vehicle, Respondent took off her tie and shook out her clothes to make sure there were no other bugs on her person. Once inside the precinct, Respondent went up to the locker room to wash her tie, and left it on the radiator to dry. Respondent testified that she noticed her hand was red, swollen, and itchy, which she believed may have been a skin reaction from being exposed to whatever chemical substance was inside the car. (Tr. 127-128, 141-142)

Respondent testified that she then went down to the desk to ask Sergeant Williams about getting a new car because of the bed bugs she had observed, and because continuing to use that RMP would pose a danger to her health. Both of them were speaking at a regular volume. The sergeant smirked, said there were no cars available, and told Respondent that she would have to

resume patrol in the same RMP. When Respondent stated that she did not want to use that car because of the bed bugs she had seen, the sergeant responded, "Well, if you get bit, you get bit. Get an exposure number." (Tr. 129-130, 143) Respondent asked Sergeant Williams whether she would go into a car knowing there were bed bugs and expose herself and her home. When the sergeant responded that she would not, Respondent then asked her why she would put Respondent in that predicament. (Tr. 131) Instead of answering, the sergeant stared at Respondent and asked her about her tie; Respondent told her it was up in the locker room, and that she could go get it. The sergeant again smirked and said, "Nope. Minor violation." Respondent accused the sergeant of retaliating against her. Respondent claimed she did not have a chance to explain that she had just washed the tie and was letting it dry. (Tr. 131-132, 152-154)

Respondent went to discuss the situation with Sergeant Zhang, who told her to standby while they checked for another vehicle. (Tr. 132) Sergeant Williams saw Respondent and again told her to resume patrol. When Respondent explained that she was waiting for another car, the sergeant stated that she was refusing a lawful order. Respondent maintained that it was not a lawful order, since it was putting her health at risk. (Tr. 133) While Respondent was trying to locate the precinct's Commanding Officer, she came upon her delegate Officer Cruz, who then spoke with Sergeant Williams on Respondent's behalf. Officer Cruz returned with a set of car keys for the other RMP, which had a flat tire. It took Respondent and her partner about 20 minutes to get the tire fixed, Officer Cascalenda was reimbursed for the tire, and they resumed patrol. (Tr. 134-136)

The Department alleges that Respondent disobeyed a lawful order from Sergeant Williams to resume patrol in RMP 5694, and also that Respondent was discourteous to the sergeant when she expressed her objection to re-entering that vehicle. Section 203-03(2) of the

Patrol Guide requires members of the service to "obey lawful orders and instructions of supervising officers." As a general rule officers, like employees of other City agencies, are required to "obey now, grieve later." However, exceptions to that rule have been recognized in other civil service contexts. These exceptions include situations where (1) the order is clearly beyond the authority of management; (2) the order is unlawful; or (3) compliance with the order would threaten the health or safety of an employee. See, e.g., *Ferreri v. New York State Thruway Authority*, 62 NY2d 855 (1984). Even allowing for the inherently dangerous nature of police work, the health and safety concerns under the third exception are reasonably applicable to the facts of this case.

The Department relies primarily on the testimony of Sergeant Williams, who was often uncertain in her account of the incident. She gave conflicting answers regarding whether she recalled that Sgt. Zhang was the patrol supervisor that night, and was unsure as to any other supervisors on duty. (Tr. 26-32). Sergeant Williams was unfamiliar with work orders, and the procedure for what actually happens to a car after an issue arises. (Tr. 36-37). She was uncertain whether a supervisor must approve an officer's request to take a car out of service, or merely be made aware of the request. (Tr. 40-44) Regarding the vehicle in question, Sergeant Williams didn't even know the number of the RMP (Tr. 38), and had no memory of whether she checked the car for bed bugs. (Tr. 44-46) She made no mention of bed bugs in her memo book, and claimed not to recognize photos of RMP 5694. (Tr. 48-49)

In contrast, Respondent's testimony was detailed and precise regarding the events of that evening. She explained how she observed several bugs within the RMP. She immediately told her partner about the bugs she had seen, and physically reacted in a way that was consistent with those observations: she swatted at one of the bugs inside the RMP, washed her tie as soon as she

returned to the precinct, shook out her clothes, and was persistent in her request to be assigned a different vehicle. It was clear from the credible evidence that this persistence was the result of Respondent's genuine concern for her health, and that it was not her intention to be discourteous or insubordinate to her supervisor. Indeed, Respondent even observed a red, itchy reaction on her hand, which may have been due to exposure to the BASF 221L. Also, Respondent was convincing when she explained that while she was at the precinct she was aware that there were no emergency situations that required a response; if there had been, she would have rushed to the scene even if it meant getting back into RMP 5694. (Tr. 146)

Officer Cascalenda provided significant corroboration for Respondent's account. Even though he didn't see the bugs himself, he confirmed Respondent's immediate outcry and reaction to seeing them, and agreed with her insistence that they be assigned another RMP. Officer Cascalenda testified that he trusted his partner's observations, and described their request for a different vehicle as "a humane thing." (Tr. 99) Upon their return to the precinct, he is the officer who initially approached Sergeant Williams to request a different vehicle because of the bed bug problem. Officer Cascalenda's support for Respondent's position was particularly persuasive in light of his acknowledgement that he did not get along well with Respondent, to the point where they had agreed not to be partners. (Tr. 101)

To be sure, it is important that discipline be maintained within the Department, which includes the need to obey lawful orders from superiors and to refrain from discourteous conduct. On the one hand, this tribunal recognizes that Respondent might have been more careful in choosing her words to express her concerns regarding the RMP. However, not every expression of a disagreement with a supervisor is misconduct, even where, as here, there is evidence that the parties to the disagreement were upset. There was no physical contact, no profanity used, and no

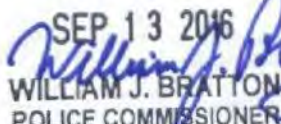
threats made. Moreover, the health concerns expressed by Respondent were genuine and legitimate -- as Officer Cascalenda suggested, it was "a humane thing."

Under the totality of the circumstances, Respondent's efforts to secure a different RMP were not unreasonable, nor was her interaction with Sergeant Williams discourteous. There were no emergency calls left unattended while the situation was being properly addressed. Sergeant Williams could not recall whether she even checked the condition of RMP 5694, and her comment, "Well, if you get bit, you get bit. Get an exposure number," was dismissive and not particularly helpful. What this situation called for was a level-headed attempt to reach some sort of accommodation for the health concerns raised by Respondent and her partner. And ultimately the situation was resolved in just that way, not by Sergeant Williams but by Officer Cruz, who secured another vehicle for the officers after which they promptly resumed patrol. Under the particular facts of this case, the credible evidence has not established misconduct on the part of Respondent either for failing to comply with a lawful order or for being discourteous to her supervisor, and I find her not guilty of Specifications 1 and 2.

As for the remaining charge, although Respondent admitted that she was not wearing her uniform tie at one point that evening, under the circumstances her removal of the tie was reasonable. Initially she was wearing her tie, and only removed it when she saw what she believed to be a bed bug on it and decided to wash the tie. Viewing her removal of the tie in the context of all that transpired that evening, I find Respondent not guilty of Specification 3.

Respectfully submitted,

APPROVED

SEP 13 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



Jeff S. Adler
Assistant Deputy Commissioner Trials