



POLICE DEPARTMENT

September 29, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Veronica Schultz
Tax Registry No. 933339
103 Precinct
Disciplinary Case No. 2013-8780

The above-named member of the Department appeared before me on May 19 and June 26, 2015, charged with the following:

1. Said Police Officer Veronica Schultz, assigned to 103rd Precinct, while on duty, on or about March 26, 2012, failed and neglected to take appropriate police action to wit, said Police Officer did not take necessary police action to restrain Person B, a perpetrator of a crime.

P.G. 202-21, Page 1, Paragraph 8 – Duties and Responsibilities

2. Said Police Officer Veronica Schultz, assigned to 103rd Precinct, on or about March 27, 2012, wrongfully caused false entries to be made in Department records, to wit, said Police Officer completed and submitted a statement of injury regarding a line of duty injury, that contained false information.

P.G. 203-05, Page 1, Paragraph 4 - Public Contact - Prohibited Conduct

3. Said Police Officer Veronica Schultz, assigned to 103rd Precinct, while on duty, on or about June 27, 2012, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer provided misleading or inaccurate statements during her official Department interview regarding the arrest of Person B and the circumstances of her alleged injury.

P.G. 203-10, Page 1, Paragraph 5 – Public Contact - Prohibited Conduct

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The Department was represented by Jamie Moran, Esq., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq. The Department called Police Officer Michael Smith, Police Officer Paul Baker, Captain Frank Letterese and Police Officer Gregory Davis as witnesses. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. 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

Respondent is found Guilty of Specifications 1 and 3. Respondent is found Not Guilty of Specification 2.

FINDINGS AND ANALYSIS

This case arises out of an allegation that Respondent failed to back up her partner and take necessary police action during an altercation that occurred following their response to a domestic incident. Respondent is also charged with submitting a line of duty injury statement containing false information, and making inaccurate statements during her official Department interview regarding the arrest and the circumstances of her alleged injury.

The following is a summary of the facts that are not in dispute. Respondent and her partner, Police Officer Michael Smith, were working a midnight tour on patrol in the 103 Precinct on March 26, 2012. (Tr. 13-14, 188) Central dispatch assigned them to respond to a family dispute at [REDACTED] [REDACTED] At approximately 0115 hours, Smith and Respondent approached the home where Person A was waiting behind an open door. (Tr. 15-16) They also observed a male, later determined to be her

fiancé, Person B, about twenty feet from the home. (Tr. 16, 189) The officers spoke to Person A who explained that her fiancé had left a drug rehabilitation program early and was acting violently, kicking and banging on her door. (Tr. 16, 190-91)

The officers directed Person B to leave the location. (Tr. 192) Person B became irate and refused to leave. (Tr. 17, 199) Person B then crossed the street and threw a neighbor's garbage can in the direction of the officers. (Tr. 17, 193). Neither officer was hit by the garbage can.

Smith chased after Person B, attempting to apprehend him, which led to a struggle in the street. (Tr. 18, 21, 200) Respondent approached and grabbed Person B's shirt sleeve. (Tr. 22, 74, 201) Person B attempted to punch her with a closed fist but the punch did not connect. (Tr. 23, 200) Person B also swung at Smith. They went to the ground and Smith got on top of Person B in an effort to detain him. Smith called a "10-85 " over the radio, indicating that he needed immediate assistance (Tr. 26) Police Officers Paul Baker and Gregory Davis responded approximately two minutes after hearing Smith's radio call. (Tr. 66) Smith, Baker and Gregory handcuffed Person B (Tr. 27)

Person B was subsequently taken back to the precinct and the arrest was assigned to Respondent. (Tr. 28-29, 206) Smith, however, ultimately took the arrest and completed the required paperwork. (Tr. 36) Both Respondent and Smith were taken to [REDACTED]

[REDACTED] Respondent and Smith prepared Aided Report worksheets. The Aided Report for Smith stated, "[the] officer did strain his back while attempting to make an arrest." (DX 2). This report was prepared in Smith's handwriting and Respondent signed the bottom of the document in the "Reported By" field. (Tr. 31) The Aided Report for

Respondent stated, "[I]njured MOS did complain of pain to left ankle after having to physically restrain perpetrator. Perpetrator did kick MOS in left ankle causing physical injury and pain. MOS treated at LIJ hospital for sprain and pain to left ankle."

(Department Exhibit ("DX") 3). This report was prepared in Respondent's handwriting and Smith signed the bottom of the document in the "Reported By" field. (Tr. 34).

Smith also completed and signed a Witness Statement, which provided, "I . . . did witness an occurrence . . . in which PO Schultz . . . was injured, the circumstances of which were as follows: I did witness above officer grab sleeve of perp while attempting to make arrest. I did not witness any further." (DX 4).

Officers Baker and Davis also submitted individual Witness Statements, which provided in sum and substance, that upon responding to the scene, they observed Smith fighting with the perpetrator, that Respondent was not engaging and that they did not witness Respondent being injured. (DX 5-6).

In dispute is whether Respondent neglected to take necessary police action while her partner was fighting Person B in an attempt to handcuff him and whether Respondent made false or misleading statements relating to this incident, including a false injury report. Having considered the testimony, evidence and arguments set forth by counsel, this tribunal finds that the preponderance of the credible evidence supports a finding that Respondent did not take appropriate police action. The evidence, however, fell short of proving that Respondent filed a false report about sustaining an injury.

Specifications 1 and 3

Respondent is charged with failing to take necessary police action to restrain Person B and making inaccurate statements during her Department interview regarding his arrest.¹ Respondent and Smith offered starkly inconsistent versions of the Respondent's actions after the initial encounter with Person B. Accordingly, it is left to this tribunal to assess which version is closest to the truth. After having carefully weighed all of the testimony, and considered various factors that speak to the credibility of each witness, this tribunal finds the Department witnesses to have been more credible than Respondent.

At trial Smith agreed that Respondent first "attempted to apprehend [Person B] by grabbing . . . his sleeve." (Tr. 22) He also agreed that Person B attempted to punch Respondent and Smith. This is where their accounts diverge. According to Smith, after Person B swung at them he continued to resist arrest but Respondent took no further action to restrain Person B. Smith testified that when Person B struck Smith in the face, he ended up struggling with Person B until he ultimately had to lay on top of Person B in an effort to enforce compliance. Smith recalled that during this physical struggle, Respondent remained standing by but did not assist to gain control of the belligerent perpetrator. (Tr. 23-24) Smith called a 10-85 over the radio and when the responding officers arrived they helped him get Person B in handcuffs. (Tr. 26) He contended that Respondent provided no further assistance although he acquiesced that he not know where she was at all times while he engaged in a physical struggle with Person B. (Tr. 26-27, 55)

¹ Having found that the Department did not prove that Respondent was not injured during the incident, I note preliminarily that neither Respondent nor her counsel at any point suggested that an injury prevented her from continuing to aid Smith in his struggle to try to detain Person B. Thus, injury did not factor into the tribunal's analysis of Specifications 1 and 3.

Smith testified that after the arrest was assigned to Respondent, she began complaining of ankle pain and asked to be removed to the hospital. (Tr. 29) When supervisors asked about Respondent's participation in the arrest and her possible injury, he recounted what had happened. (Tr. 30) Smith took the arrest and prepared the required paperwork after being treated at the hospital for his own injuries. (Tr. 31, 36) Smith also signed an Aided Report for Respondent that Respondent filled out detailing her injury and stating that she was kicked in the ankle by Person B. However, at trial he testified that he did not actually witness Person B kick Respondent. (Tr. 64) He stated that he signed the report, not because he believed it to be accurate, but because a signature was required to complete her paperwork. (Tr. 34-35, 41, 43)

Respondent provided a vastly different recollection of the arrest. According to Respondent, she "believe[s]" that after Person B threw a garbage can at them she requested an ambulance because "at that time he was considered to be an emotionally disturbed person." (Tr. 194) She claims that Smith said, "He's not going to go down easily . . . Watch this" and ran after Person B. Respondent testified that Smith tried to trip Person B and then tackled him to the ground. She moved next to them and Person B swung at both her and Smith. (Tr. 200) She ducked to avoid the punch and grabbed one of Person B's arms while Smith grabbed the other. Respondent further claimed that Person B kicked her, causing her to be pushed back toward the car. (Tr. 231-32) She stated that she "attempted" to call for backup but was not sure if her radio had worked. (Tr. 240)

According to Respondent, Smith began kicking Person B while stating that he wanted to break his ribs. Respondent testified that she continued to hold Person B's arm as they both struggled with him. (Tr. 200-01, 217) It was her testimony at trial that when

Baker and Davis arrived as backup, Baker told her to "move" and "get out of the way." Davis, she contended, then stepped on Person B's head and the officers handcuffed him. (Tr. 202) Respondent explained that she considered this to be excessive force but did not make an Internal Affairs Log until three years later, explaining that she did not believe she needed to because a supervisor had observed the force. She did, however, tell the sergeant that Person B would have to go to the hospital because he was injured. (Tr. 234-37)

Respondent recounted that upon returning to the precinct, Sergeant Gomez instructed her to "take the collar." (Tr. 206) She informed Gomez and Lieutenant Letterese that she had sustained an injury to her ankle and asked to go to the hospital. (Tr. 208). She recalled Letterese ask if she had done all she could to effectuate the arrest. When she answered affirmatively, she was permitted to go to the hospital. At the hospital Respondent's ankle was x-rayed. She was diagnosed with a "possible sprain" and was put in an air cast. (Tr. 209-10) Respondent recalled that she was limping and could not wear her boot. (Tr. 210) Respondent explained that upon returning from the hospital, Smith asked to take the arrest because he needed overtime. (Tr. 211) Respondent consented and, after receiving approval from a supervisor, went home.

Additional testimony in support of the Department's case was provided by Police Officer Baker, Police Officer Davis and Captain Frank Letterese, who was platoon commander at the 103rd precinct on the night of the incident. Baker testified that when he and Davis responded to the 10-85 call from Smith, he observed Smith in the street struggling with Person B while Respondent was "standing there" holding "papers." According to Baker, Respondent did not appear injured but acquiesced that he did not know whether she sustained an injury prior to his arrival. (Tr. 84-88, 94, 205) Finally, he

asserted that he did not recall saying anything to Respondent or hearing Davis say anything to her. (Tr. 102).

Davis also testified similarly that when they arrived, Smith was on the ground wrestling Person B and Respondent was standing on the sidewalk holding "papers." (Tr. 154). He recalled that Respondent looked neat and clean while Smith was out of breath and dirty. (Tr. 155-56). He asserted that no one told Respondent to get out of the way or move as she was not in the way. (Tr. 156, 173). He further recounted that Baker called for both EMS and ESU because "the perpetrator was still acting up." (Tr. 157) Like Baker, Davis asserted that Respondent did not appear hurt or injured. (Tr. 155)

Captain Letterese, who was never at the scene, testified that after becoming aware of the incident, he asked Smith at the precinct to explain what had occurred. Smith told him that Respondent had not assisted when he was trying to arrest a resisting perpetrator. (Tr. 113) He then spoke to Respondent who told him that she tried to help with the arrest but had hurt her ankle. (Tr. 113) Letterese observed that Smith looked "like he was fighting . . . disheveled and dirty . . . scraped up," and that Respondent was "clean and neat and put together." (Tr. 114) He advised his commanding officer of the incident and the commanding officer eventually notified IAB.

After assessing the record as a whole I found the Department witnesses to be credible. They testified consistently with one another in a straightforward manner and without embellishment. Their tone was calm and measured and betrayed no element of anger or zeal. Moreover, these witnesses were not shown to have any motive to lie about this incident or exhibit any specific bias against Respondent. For example, there was no credible evidence of a prior relationship with Respondent that would provide a personal

motive to make false accusations. Accordingly, I credit Smith's testimony that after initially grabbing onto the perpetrator's sleeve and nearly being punched by him, Respondent ceased to engage with or make any further effort to restrain Person B. I further credit the testimony of Baker and Davis that when they arrived, Respondent was standing and watching Smith and Carter struggle on the ground as she held paperwork in her hands. I also credit Captain Letterese's corroborating testimony that when they returned to the precinct, Smith appeared disheveled and bruised, while Respondent was neat and did not appear to have been involved in a physical scuffle.

In contrast, I found lacking in candor Respondent's account that, until Baker and Davis arrived at the scene, she had been actively trying to detain Person B and even "wrestled" with him alongside her partner. (DX 9) At trial Respondent testified that she only stopped engaging with Person B when Baker told her to "get out of the way." During her Department interview, however, Respondent did not disclose that she was told to move or given a similar directive. This is a critical detail that is unlikely to have been mistakenly forgotten just a few months after the incident. Given this context, Respondent's trial testimony on this point seemed like an after the fact embellishment aimed at minimizing her culpability.

Moreover, the timing of Respondent's Internal Affairs Log claiming that Smith and Davis used excessive force during the arrest of Person B is troubling. The first time Respondent made this claim was in May 2015 — three years after the incident trial. The significant delay in making these allegations, and that they were made in such close proximity to her trial date, also calls into question Respondent's motive and credibility.

It also underscores that Respondent has a strong motive to embellish or fabricate details of her account.

Other arguments set forth by Respondent's counsel do not alter this tribunal's determination that after the initial engagement with the perpetrator, Respondent then failed to continue backing up her partner. First, counsel suggests that because Person B may have been an emotionally disturbed person ("EDP"), Smith erred in trying to restrain him and should have kept a number of feet back, creating a "zone of safety." Respondent stated at trial and at her Department interview that she called for an ambulance to "EDP this," (Tr. 194; DX 9 at p.6) but there is no evidence of this call and Smith testified that he recalled no conversation about Person B being an EDP. (Tr. 55) More importantly, even if Person B should have been designated an EDP and even if Smith did not handle the situation optimally, the fact is that Respondent's partner ended up in a physical fight with a perpetrator. At that point, Respondent was obligated to back up her partner and do all she could to help restrain Person B.

Respondent's counsel also suggested that it may have appeared that she was not engaging because she was actually watching over the scene and ensuring that no other individuals became involved in the altercation. I note that while counsel raised this theory, Respondent herself never stated to investigators or at trial that this is what she was doing. Moreover, Respondent's first obligation when her partner was fighting in the street with a potentially dangerous perpetrator was to aid her partner and not stand back to survey the area for other potential threats.

Finally, counsel's argument that Smith's testimony is not credible because he has changed his story about the events surrounding Person B's arrest also fails. It is true that

in a

brief conversation immediately following the altercation, when asked by Captain Letterese what had happened, Smith told him that Respondent had not helped him, failing to mention that she had initially grabbed the perpetrator's sleeve. (Tr. 128-29). However, Smith never denied at trial, during his Department interview in 2012, or in any official paperwork prepared immediately following the incident, that Respondent grabbed Person B's sleeve and dodged a punch. (See DX4). In sum, Smith has consistently maintained that after initially grabbing the sleeve and ducking a punch, Respondent stopped assisting and did not engage further. Thus, I do not find Smith's statement to Letterese that Respondent did not help him to be materially inconsistent with his later statements.

It is also true that Smith signed Respondent's "Aided Report," (DX3) which stated that she was kicked in the ankle by Person B but later asserted that he never witnessed her sustaining an injury and simply signed the document so she could complete the form. The Department's Advocate acquiesced that Smith should not have signed the Aided Report if he had not witnessed the injury and this tribunal agrees. (Tr. 264) However, I do not find that his doing so created material inconsistencies that go to the question of whether Respondent took necessary police action to restrain Person B and back up her partner during the entire course of the altercation. Again, on that point, Smith's statements have been consistent.

In sum, this tribunal finds that Respondent stopped engaging with Person B after her initial effort to restrain him by grabbing his sleeve. In doing so, she violated her obligation to her partner and failed to take necessary police action. Accordingly, she is Guilty of Specification 1. I also find that Respondent made materially inaccurate

statements at her Department interview about her level of involvement, namely that she was "wrestling with the perp." (DX 9 at pp.8-13) Additionally, the Criminal Complaint Report filed against Person B, (See DX 8), names Smith as the sole deponent and victim of assault. Accordingly, she is found Guilty of Specification 3.

Specification 2

Respondent is charged with submitting a false statement regarding a line-of duty injury sustained during the March 26, 2012 incident. The preponderance of the credible evidence presented at trial, however, does not support this charge.

As discussed in more detail above, Respondent and Smith agree that early in the encounter Respondent attempted to grab onto Person B's sleeve and that Person B swung at her. It is also undisputed that Respondent was transported to Long Island Jewish Hospital following the altercation and, according to her personnel record, she went sick from March 26, 2012 through March 28, 2012. Respondent further testified, without contradiction, that she was diagnosed with a possible sprained ankle that subsequently swelled up and that she left the hospital in an air cast. On these facts alone, it is reasonable to infer that that Respondent sustained some sort of ankle injury during this encounter.

The testimony of the Department witnesses proved of limited value in this case. Although Smith did not see Respondent actually sustain an injury, he conceded that initially there was contact between Respondent and Person B and she was not always in his line of vision. Moreover, the two other officers on the scene credibly testified that Respondent appeared uninjured but they were not present for the entire incident and did not witness the initial interaction between Respondent and Person B. In light of the record

as a whole, their testimony was insufficient to prove that Respondent did not sustain an injury and that her line of duty paperwork contained false statements. Accordingly, I find Respondent Not Guilty of Specification 2.

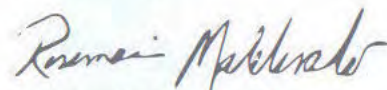
PENALTY

The Department seeks a penalty of thirty (30) vacation days and one-year dismissal probation for the three specifications charges. 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). Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent's failure to back up her partner in this situation constitutes serious misconduct that goes to the heart of police work. It is absolutely critical that officers on patrol and in other potentially dangerous situations be able to rely on their partners. Department precedent supports a significant penalty to address this type of misconduct. For example, in *Case No. 12574/14* (June 24, 2015), an eleven-year police officer negotiated a penalty of thirty (30) vacation days for failing to assist his partner who was engaged in a struggle with a perpetrator. A responding supervisor observed the officer standing idle, not taking any police action, until he noticed the supervisor's car had arrived on the scene. That case is distinguishable from the present matter as there was no charge of a subsequent inaccurate statement. See also *Disciplinary Case No. 85346/09* (November 3, 2010) (Four-year police officer with no prior disciplinary record is dismissed from the Department for abandoning his partner during a confrontation with an armed emotionally disturbed person).

Taking into account Department precedent, Respondent's tenure, the requested penalty and that Respondent was found Not Guilty of Specification 2, this tribunal recommends that Respondent forfeit twenty-five (25) vacation days. It is further recommended that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which she remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

JAN 08 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VERONICA SCHULTZ
TAX REGISTRY NO. 933339
DISCIPLINARY CASE NO. 2013-8780

Respondent was appointed to the Department on July 1, 2003. Her last three annual evaluations were as follows: she received a 3.5 overall rating of "Highly Competent/Competent" in 2014, and 3.0 overall ratings of "Competent" in 2012 and 2013. She has seven medals for Excellent Police Duty.

Respondent has no prior formal disciplinary record.

[REDACTED]

For your consideration.



Rosemarie Maldonado
Deputy Commissioner – Trials