



POLICE DEPARTMENT CITY OF NEW YORK

May 24, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Adekunle Longe
Tax Registry No. 933942
45 Precinct
Disciplinary Case No. 2015-14208

Charges and Specifications:

1. Said Police Officer Adekunle Longe, while assigned to the 61st Precinct, on or about April 26, 2015, in the confines of the 61st Precinct, did fail and neglect to perform said officer's duties, to wit: said officer failed to promptly take police action and properly investigate two (2) separate radio runs.

P.G. 203-05, Page 1, Paragraph 1 - POLICE OFFICER-DUTIES AND RESPONSIBILITIES

Appearances:

For the Department: Anna Krutaya, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Emeka Nwokoro, Esq.
Nwokoro and Associates, LLP
48 Wall Street, 11th Floor
New York, New York 10005

Hearing Date:

February 26, 2016

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 26, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Michael Howery and Detective Leonard Craig as witnesses. Respondent testified on his 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 Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. On April 26, 2015, Respondent worked a 1500 to 0335 hours patrol tour in the 61st Precinct in Brooklyn with Detective Leonard Craig. Lieutenant Michael Howery of Brooklyn South Investigations was also working that day conducting patrol monitoring in the 61st Precinct with his partner Lieutenant Anderson. Patrol monitoring involves monitoring radio transmissions and sector vehicles within a precinct to ensure both proper and tactically safe responses to patrol assignments. The issue before this tribunal concerns Respondent's response to two radio assignments during that tour of duty (T. 13, 16, 69, 73-74, 102).

Between 1445 and 1550 hours, while both Respondent and Craig were still in the stationhouse, they received their first assignment over the radio. Respondent acknowledged receipt of the job, a motor vehicle accident, to Central Dispatch (T. 17, 102-103).

Sometime between 1620 and 1623 hours, Respondent and Craig arrived at the scene of the motor vehicle accident assignment, [REDACTED]. They remained at the scene for approximately five to ten minutes before marking it as unnecessary and proceeding to their next assignment. Respondent and Craig responded to two more assignments between approximately 1645 hours and 1744 hours. At approximately 1740 hours, while still completing a previous assignment, Respondent and Craig were directed to proceed to the intersection of [REDACTED] [REDACTED] to respond to a complaint of an inoperable traffic light. Approximately 28 minutes after their arrival, Central Dispatch contacted Respondent and Craig to check on the status of the assignment. At that point, Respondent marked the job as unnecessary (T. 23, 25, 31, 33, 80, 106-108).

Shortly thereafter, Respondent and Craig were approached by Lieutenants Howery and Anderson, who informed them that they had been the subjects of patrol monitoring since the beginning of their tour. Lieutenant Howery questioned them regarding their response time to their first assignment and the length of time it took to complete the fourth assignment (T. 36, 89, 118).

At issue in this case is whether Respondent failed to promptly take police action and properly investigate the two aforementioned radio assignments.

At trial, Lieutenant Howery testified that on April 26, 2015, a decision was made to conduct patrol monitoring within the confines of the 61st Precinct. Howery testified that patrol monitoring is conducted on a weekly basis with no set schedule for determining which precinct will be the subject of monitoring. Furthermore, no one within the chosen precinct is made aware that the precinct will be monitored and no

particular individual is selected for monitoring. Howery explained that once he and his partner enter the confines of the chosen precinct, they listen to the radio frequency covering that area. Once a radio assignment has been acknowledged by a sector car, he and his partner will also respond to the location of the assignment and observe how the assigned sector car handles the situation. Howery further explained that at the time a sector car acknowledges and responds to a particular assignment, neither he nor his partner are made aware of who is assigned to that particular vehicle (T. 14).

At approximately 1545 hours, a motor vehicle accident with injuries at the [REDACTED] was broadcast over the radio. The job was assigned to, and acknowledged by, officers covering sector "K." Howery testified that at the time the job was acknowledged, he did not know which officers were assigned to sector "K" (T. 17-18).

Howery testified that he continuously monitored the radio while he waited for the sector car to arrive at the scene of the accident. At no point from the time the job was assigned to the sector car's arrival on the scene was a radio transmission made regarding the sector car's projected time of arrival (T. 22).

Once the sector car arrived at the scene, Howery identified it by its RMP number, which was 4950. Other than the RMP number, Howery had no other information regarding the identities of the officers inside. Howery observed the sector car pull up to the corner of the intersection, where it remained for between five and ten minutes, before making a turn and approaching a civilian. While remaining in the sector car, the officers apparently had a discussion with the civilian for a few minutes before ultimately marking the job as unnecessary (T. 24-26).

Howery testified that after having observed the 38 minute response time to the radio assignment, he believed that misconduct had occurred and could have issued a Command Discipline to the officers in RMP 4950. At that point, however, Howery noted that it is common practice during patrol monitoring to continue monitoring a specific sector car after observing what appears to be misconduct in an effort to ascertain whether the observed conduct is an aberration or part of a pattern (T. 29-30).

Howery monitored Respondent's sector car as it handled three additional radio assignments. At approximately 1740 hours, Respondent and Craig received the fourth radio assignment to investigate a potentially defective traffic light at [REDACTED], a large intersection in a commercial area. Howery testified that he and Anderson arrived at the intersection at the same time Respondent's sector car arrived. Howery and Anderson positioned themselves on the west corner of the intersection and watched the sector car, which was positioned on the south end, while monitoring the radio. The sector car remained at the south end of the intersection for approximately 21-24 minutes. Thereafter, the sector car crossed over to the northbound side of the intersection and into a gas station, at which time Craig exited the RMP and entered the gas station. Respondent also stepped out of the RMP, but remained standing next to it. According to Howery, Respondent did not appear to be observing the traffic lights at that point and had not yet made contact with Central Dispatch. Shortly thereafter, both Respondent and Craig re-entered the RMP, crossed back over the northbound lane into the southbound lane of the intersection, where they remained for another four minutes (T. 30-33, 36).

Howery explained that Central Dispatch checks in with a sector regarding an assignment after 30 minutes to determine the status of the assignment. Accordingly, 28 minutes into the assignment, Central Dispatch contacted Respondent's sector and only then did Respondent mark the job as unnecessary. According to Howery, he was able to determine that the traffic lights were functioning properly after five minutes of observation at the intersection (T. 32-33).

Once the assignment had been marked as completed, Howery and Anderson approached Respondent and Craig to question them about why it had taken them so long to respond to the first assignment. Howery also questioned Respondent and Craig about why it had taken them so long to determine whether the traffic lights were operable. Finally, Howery inspected their Activity Logs, then issued each a Command Discipline (T. 36-37).¹

Respondent testified he received his first patrol assignment of the day, a motor vehicle accident, at 1550 hours. According to Respondent, when he heard the assignment over the radio, he understood it to be a simple motor vehicle accident; he did not find out until later that it was actually a motor vehicle accident with injuries. Respondent acknowledged the assignment to Central Dispatch, but when he went outside the stationhouse, he was unable to locate the RMP he and Craig had been assigned to. Respondent informed the desk sergeant that he was unable to find the RMP but was told that the RMP he had been assigned had been given to other officers. The Desk Sergeant told Respondent that he would get him another RMP for his use (T. 102-106, 121).

¹ This trial is the result of Respondent's refusal to accept a Command Discipline for the charged misconduct.

For his part, Craig testified that despite being a 23-year Member of Service, this particular tour was one of his first spent on patrol. As a result, he was not "familiar with the radio at the time" and was unaware of what was being transmitted over the radio. However, he was aware that he and Respondent had to wait for a sector car at the beginning of their tour. He further testified that he was essentially receiving on the job training from Respondent because of his lack of patrol experience (T. 73-75, 77, 86).

Approximately 20 minutes after receiving their first assignment, Respondent and Craig were assigned RMP number 4950. At that point, they proceeded to the location of the motor vehicle accident (T. 106).

Respondent testified that when he and Craig arrived at the scene, they made no observations consistent with the occurrence of a vehicular accident. They exited the RMP and spoke to a gentleman who told them that there had been no accident. They spent a total of approximately ten minutes at the location before marking it as unnecessary and moving on to their next assignment (T. 107-108).

Respondent testified that later on when he and Craig arrived at the traffic light assignment, they parked on the [REDACTED] where they remained observing approximately sixteen traffic signals. After between ten to fifteen minutes, they switched sides of the street and drove to a gas station. Craig told Respondent that he needed to use the restroom. Craig then went to use the restroom at the gas station and Respondent waited outside the RMP. On cross-examination, Respondent testified that he was still watching the traffic lights as he waited for Craig to return from the restroom. Approximately ten minutes later, Craig returned, they re-entered the RMP, then crossed the intersection. According to Respondent, his intention

was to park the RMP and mark the job as unnecessary because, at that point, he had had sufficient time to observe the traffic lights. As Respondent was parking, Central Dispatch contacted him to check on the status of the assignment. At that point, approximately twenty-eight minutes after they arrived at the intersection, Respondent notified Central Dispatch that the traffic lights were working properly. On cross-examination, Respondent testified that the moment when Central Dispatch contacted him about the status of the assignment was the precise moment he determined that the traffic lights were working properly (T. 96, 116-118, 133-134).

Craig testified at trial that he and Respondent moved several times in their RMP to different locations at the intersection to observe the traffic lights. He further testified that they were observing the lights the entire time they were at the intersection, other than the few minutes he took to use the restroom (T. 95, 98).

Respondent testified at trial that he was aware that patrol monitoring was occurring within his precinct that day. On direct examination, Respondent testified that he had seen the patrol monitoring unit inside the precinct after roll call. However, on cross-examination, he admitted that he had not actually seen the Lieutenants in the precinct, but had heard from two sources that they had come into the precinct to pick up a copy of the roll call for that tour (T. 110, 120).

In his defense, Respondent asserted that his arrival at the first assignment was delayed by circumstances beyond his control. On cross-examination, Respondent testified that he did not think it was important to notify Central Dispatch of the delay in obtaining an RMP to begin patrol. With regard to the fourth patrol assignment, Respondent's attorney argued that because of the size of the intersection and the large

number of traffic lights, the amount of time it took Respondent to notify Central Dispatch that the traffic lights were working was appropriate (T. 124, 139).

Based upon a preponderance of the credible evidence in the record, I find that Respondent failed to promptly take police action and properly investigate the two aforementioned radio assignments.

While it is true that it was not Respondent's fault that his assigned RMP was not available for his use at the beginning of his patrol tour, by the time that he learned that the RMP was unavailable, he had already acknowledged and accepted radio assignments from Central Dispatch. Howery testified credibly that with regard to the first assignment, it should have taken approximately six to eight minutes for a sector car to drive from the 61st Precinct stationhouse to the scene of the accident² (T. 19, 22-23). Howery testified further that Respondent should have notified Central Dispatch that he and Craig were delayed in getting an RMP at the beginning of their tour, particularly because it was reported as a motor vehicle accident with injuries. Furthermore, Respondent should have made an Activity Log entry regarding the delay, as well as an entry regarding who he spoke to at the scene. I find Respondent's testimony that he was unaware that the first assignment was a motor vehicle accident with injuries to have been contrived in an attempt to mitigate the fact that he did not arrive at the scene until 38 minutes after receiving the assignment. Howery testified credibly that Central Dispatch transmitted the assignment over the radio as a motor vehicle accident with injuries and I find no reason to discredit his testimony.

² Although Howery was neither offered nor qualified as an expert witness, he offered this opinion without objection.

Additionally, I find that the amount of time taken by Respondent to complete the traffic light assignment was, in fact, excessive. With regard to this complaint, Respondent should have contacted Central Dispatch to obtain additional information about when the traffic lights had been reported inoperable and could have checked the light box on the pole of the traffic light. As previously stated, Howery testified that he was able to determine that the traffic lights were in steady working order after five minutes of observation at the intersection. In his opinion, the 28 minutes it took Respondent and Craig to notify Central Dispatch that the traffic lights were working was excessive (T. 35-36).

I certainly appreciate the fact that the intersection of [REDACTED] [REDACTED], as testified to by each witness, is a large commercial intersection; I find, however, based on Howery's testimony that he was able to determine that the traffic lights were working properly after only a few minutes of observation, as well as general common sense, Respondent should have also been able to make a similar determination before Central Dispatch attempted to contact him.

Even if I were to credit Respondent's assertion that the amount of time it took to close out the assignment was not excessive because there were so many traffic lights at the intersection that needed observation, Respondent's assertion on cross-examination that he determined the lights were in working order at the exact moment that Central Dispatch raised him regarding the status of the assignment seems contrived and opportunistic.

Accordingly, I find Respondent Guilty of the charged misconduct.

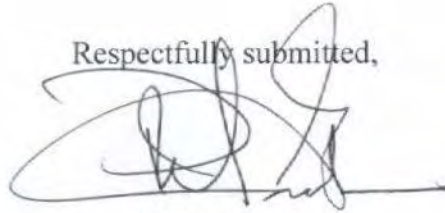
PENALTY RECOMMENDATIONS

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 January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of failing to promptly take police action and properly investigate two separate radio runs. The Department Advocate recommended the forfeiture of five vacation days as a penalty, which I find excessive. *See Disciplinary Case No. 2013-10642* (July 24, 2015) (Six-year police officer with no prior disciplinary record forfeits five vacation days after a mitigation hearing for failing to respond to a radio run of found property and also failing to make proper Activity Log entries about the call); *Disciplinary Case No. 2010-2524* (August 16, 2012) (Eighteen-year police officer with no prior disciplinary record negotiated a penalty of 5 vacation days for failing to notify the radio dispatcher at the start of a vehicle pursuit). In each of the above cited cases, the respondents forfeited five vacation days for misconduct more egregious than this case, such as complete failure to respond to a radio run and failure to notify Central Dispatch after beginning something as dangerous as a vehicle pursuit.

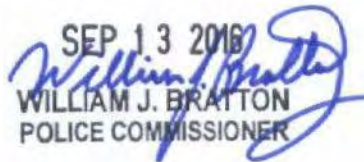
Accordingly, I recommend a penalty of the forfeiture of two vacation days as more appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Paul M. Gamble', written over a horizontal line.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

SEP 13 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ADEKUNLE LONGE
TAX REGISTRY NO. 933942
DISCIPLINARY CASE NO. 2015-14208

On his last three performance evaluations, Respondent received an overall rating of 3.5 "Highly Competent/Competent." [REDACTED]

Respondent has been the subject of two prior adjudications. In Case No. 2010-1904, Respondent pled guilty to being discourteous to a sergeant, failing to comply with a lawful order, being absent from his assignment for approximately two hours and five minutes without leave, and being absent from his assignment without permission for approximately one hour. In Case No. 2012-7104, Respondent pled guilty to failing to comply with a lawful order, failing to timely prepare a Property Clerk's Invoice Worksheet, failing to timely prepare an Arrest Report Supplement Form, and failing to notify the New York County District Attorney's Office of an additional arrest charge in connection with the arrest of an individual. For these two disciplinary cases, Respondent negotiated a penalty of the forfeiture of 45 vacation days.

From November 10, 2010 to January 24, 2013, Respondent was on Level 2 Disciplinary Monitoring based on his overall record. Beginning February 5, 2016, Respondent was placed on Level 1 Disciplinary Monitoring, which remains ongoing.

Paul M. Gamble
Assistant Deputy Commissioner Trials