



POLICE DEPARTMENT

October 17, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Kharl Pinnock
Tax Registry No. 933185
79 Precinct
Disciplinary Case No. 2012-8590

The above-named member of the Department appeared before me on July 12, 2013, charged with the following:

1. Said Police Officer Kharl Pinnock, assigned to the 79th precinct on or about January 6, 2012, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully caused an inaccurate instrument to be filed with Kings County Criminal Court, to wit: said Police Officer, improperly signed a supporting deposition for another member of the service that was filed with Kings County Criminal Court.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

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

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

Respondent was appointed to the New York City Police Department (NYPD) on July 1, 2003. Upon completion of the academy, Respondent was assigned to the 79 Precinct where he is still assigned.

Respondent works midnight conditions and has made 385 arrests in his career. Respondent said he has received awards for his activity as a member of the NYPD, and has been acknowledged by the NYPD about 30 times for excellent police duty and about five times for meritorious police duty. Respondent stated he has also been awarded cop of the year in the 79 Precinct in 2012.

Respondent testified he has never worked in an undercover capacity, but has been involved in undercover operations in uniform as a back up. Respondent said he has never received any training for this type of operation.

On January 6, 2012, Respondent was working an 8:00 p.m. to 4:35 a.m. tour assigned to an Operation Losing Proposition sting. Respondent explained Operation Losing Proposition is when a female police officer, dressed in civilian clothes, would go to a prostitution-prone location inside the precinct and stand on the corner in an attempt to have a passerby solicit her for sexual activities. On January 6, 2012, Respondent was assigned the arrest car. This meant Respondent would stay down the block from the location and wait for a signal to be given that someone made a sexual proposition. Respondent would receive a description of the person and then move in and make an arrest. Respondent believed that four arrests were made during the tour. Before this day, Respondent had never worked with Officer A, the undercover.

Respondent said that in the Kings County District Attorney's office, there are forms used for certain types of arrests. Patronizing a prostitute is one of those crimes where a form is used. Respondent stated he filled out the forms as the arresting officer, but put down the wrong shield number for Officer A. During his time as a police officer making arrests, Respondent did not know how an undercover is supposed to sign a criminal complaint. Respondent was aware that undercovers do not put their names down. Instead they only put their badge number down for identification.

When filling out the documentation for the arrest, Respondent did not put Officer A down as the undercover. Respondent explained,

I basically filled out what I observed and what she told me at the scene when the arrest was made. It would read, "I", and where it says "Name" would normally we put "U/C", (U slash C) for undercover, and their shield number, and the defendant's name, and what was offered and for how much.

Respondent did not write "informed by undercover shield number [REDACTED]" on the complaint. Respondent stated everything contained in the complaint against Person A, the defendant, was correct and directly observed by him.

Three and a half months later, Respondent appeared at Kings County Criminal Court to testify about the arrest. Person A's attorney showed Respondent a paper with his signature on it and asked him if he filled it out. Respondent said, "I saw my handwriting on the paper and I said yes." The paperwork Respondent had signed was a form that should have been signed by the undercover. Respondent never hid that fact from the defense attorney or the judge.

During the three and a half month period from the arrest date to his court appearance, the Assistant District Attorney (ADA) never asked Respondent whether the undercover had signed the form or if it was his signature.

Respondent said he had never been disciplined by the Department before this incident. Respondent testified numerous times in court and always told the truth in the documents he has signed and in his testimony. Respondent testified the information contained in the criminal court complaint was accurate.

On cross-examination, Respondent agreed that he was trained in the proper preparation of paperwork in the Police Academy and that paperwork needed to be complete and accurate. Respondent acknowledged he was trained to sign his own reports and Department forms and that this was important. Respondent admitted it was reasonable to require the police officer who completes a form to sign it.

Respondent agreed he has testified in court and before a grand jury many times during his career. When testifying, Respondent was questioned almost every time about the documents he prepared for the case. When being shown documents in court, Respondent was asked if the document was filled out by him and if the signature on the document was his.

Respondent agreed part of the reason reports are prepared is to assist in recalling the facts about the case later on, and that a name and signature are on a report to identify the person who filled out the report.

Respondent did not remember being trained in the Academy about documents that have a sworn statement with a penalty of perjury. It was during his ten years with the

Department that Respondent learned that sworn statements are filled out on a criminal complaint under the penalty of perjury.

In addition to the 385 arrests he had made in his career, Respondent assisted in numerous other arrests. All the individuals Respondent had arrested during his career for domestic violence, narcotics possession and shoplifting required a supporting deposition, which he would prepare.

Respondent acknowledged that during his career he has gone to the Brooklyn DA's office to talk to ADAs and answer questions about his arrests. Sometimes he would talk to the ADA over the phone. After conferring with the ADA, the ADA would type something up and Respondent would be asked to read it to ensure that it was accurate. Most of the time, Respondent would sign the complaint as the deponent.

Respondent understood that when a sworn document is signed, the signer is swearing to the truth of the facts in the document. Respondent had made arrests in more than one Losing Proposition operation.

On January 6, 2012, Respondent had two arrests assigned to him and completed the paperwork for them at the precinct. Respondent acknowledged Officer A was the undercover involved with Person A's arrest. While filling out the paperwork, Respondent did not know where Officer A was. Respondent admitted he did speak with Officer A when he first arrived at the precinct as well as at the scene.

Respondent remembered being asked questions at his official Department interview on October 10, 2012. Respondent agreed he stated at his interview that Officer A was still available when he filled out the supporting deposition (DX-1).

Respondent acknowledged Offer A's undercover number is [REDACTED] Respondent showed his arrest paperwork for Person A to his direct supervisor to review and sign. Respondent explained that DX-1 is a two page supporting deposition document for patronizing a prostitute. The first and second page of the document has the defendant's name and arrest number on it.

Respondent read a paragraph on page two of DX-1:

I, PO Pinnock, shield number 30827, am a police officer from the New York City Police Department. If page one is completed by an undercover officer, the arresting officer must complete this page, including Section 6, identification procedure.

Respondent agreed he filled out Section 6 on the form which has a warning about false statements, and signed the bottom of the page. By signing the document, Respondent acknowledged that he was swearing that he was a police officer, that the individual arrested was identified by the undercover officer to him, and that the arrest took place because he saw it and heard it.

On page one of DX-1, Respondent read the following paragraph:

It says I, U/C [REDACTED], shield number [REDACTED], am a police officer for the New York City Police Department. If officer is undercover, use undercover number only.

Respondent agreed there was a warning on the bottom of the document which was the same on page number two of DX-1. "I wrote the date, 1/6/2012, and I wrote U/C and the number sign and [REDACTED]," Respondent acknowledged. Underneath this, the document says "signature of police officer. If officer is undercover, sign using undercover number only."

Respondent agreed he was not within hearing distance and did not observe when Person A offered money in exchange for coitus to Officer A. Respondent acknowledged

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reason an undercover uses their undercover number is so their identity remains confidential and safe. Respondent agreed an undercover number is a replacement of the undercover's signature. On DX-1, Respondent admitted, "Well, the number is, in essence, their shield number. And clearly, on this form on the date I wrote the wrong shield number. Normally U/C and their shield number. That's the undercover." Respondent agreed the criminal case against Person A was dismissed.

On redirect examination, looking at DX-1, Respondent reiterated all the information filled out on the form was correct. The information was based on his conversations with Officer A and his observations of the location of Classon Avenue and Fulton Street.

Respondent stated the only mistake on the form is that he wrote the wrong shield number down for the undercover and that he was not supposed to sign on the line. Respondent testified he was the arresting officer and the bottom line underneath says "signature of police officer." It says "sign using undercover number only" in parentheses, and does not say "sign if informed by": it just says "sign using undercover number."

When questioned by the Court, Respondent said that he signed for the undercover because it is routine and the undercover is not supposed to sign using their real names. Signing the supporting deposition is done on a regular basis on these kinds of arrests, Respondent explained. When filling out the form, Respondent testified, "She told me what happened. I was at the scene. I filled out the paperwork. And she doesn't sign the bottom of the paper, so I wrote U/C and her shield number."

On redirect examination, Respondent said he filled out all of the undercover's information because preprinted forms are used for these types of arrests. When he was

referring to how things are routinely done, Respondent explained that he was describing minor crimes where a preprinted form is used to encompass all the information including the identification procedure and any conversation that occurred. Respondent testified other types of crimes for which a preprinted form is used are: narcotics arrests, marijuana arrests and local law violations. Respondent reiterated that these are all minor offenses.

On recross-examination, Respondent admitted the way he filled out the form was incorrect. In his years being a police officer, Respondent acknowledged, "this is the only situation that I ever dealt with that dealt with an undercover and the way these forms. [sic] The way this particular arrest is done is only with patronizing a prostitution arrest."

When questioned by the Court, Respondent agreed not being permitted to sign for an undercover is only true in prostitution cases and he did not know this at the time of the arrest. Respondent testified he was never formally trained in dealing with undercovers and patronizing a prostitute arrests. Respondent believed that some sort of training is involved in processing these kinds of arrests and he was not trained on how to fill out paperwork when dealing with undercovers. Respondent had seen that with prostitution cases, an undercover would sign paperwork and fax it to the DA's office who would then call back and say the undercover should not sign the form. In this particular case, Respondent stated he was not to use the undercover's name on the paperwork and only used their shield number. Respondent did not consider that writing the shield number on the paper was considered a signature. That is the reason why he did it. Respondent thought writing U/C and their shield number on the paperwork would satisfy the requirements to process the arrest.

On re-cross examination, Respondent reiterated that in prostitution cases, the undercovers do not physically sign their name, but only write their shield numbers down for their signature. During his career, Respondent admitted he has made arrests where he was informed of the facts of the case, has spoken with an ADA about those cases and told the ADA that he was informed by a person what happened. Respondent agreed with the Court that he told the ADA in this case that he was informed by the deponent about what had happened. Reviewing page two of DX-1, Respondent agreed he filled the page out and signed it.

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, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent is charged with improperly signing a supporting deposition for another member of the service that was filed with Kings County Criminal Court on or about January 6, 2012.

Respondent admitted that he wrote the wrong shield number for an undercover and that he failed to write that he had been informed by the undercover about what occurred, instead signing his own name on a supporting deposition filed in Kings County Criminal Court. Respondent explained that he had no previous training or familiarity in filling out the supporting deposition forms in prostitution cases.

statements from the Academy, had made close to 400 arrests, participated in Losing Proposition arrests and testified numerous times in courts about his signature on supporting depositions. Respondent had to know that the whole purpose of a supporting deposition is to provide a non-hearsay statement of fact. By signing as the undercover, Respondent gave a false statement which caused the criminal case to be dismissed.

Respondent's argument that the only reason that his misconduct was discovered was because he wrote the wrong shield number for the undercover is troubling. The argument demonstrates that Respondent does not believe that he made a serious mistake, that he was content to have signed false statements and were it not for having been discovered, would continue to do so. The public has a right to expect police officers to prepare truthful sworn statements.

Since Respondent did not alter the facts in his supporting deposition and has no prior disciplinary record, the Department's recommendation of the 30 vacation day penalty is reasonable and supported by case precedent. See *Case No. 711/2010* (December 3, 2012), *Case No. 2066/2010* (November 8, 2011), *Case No. 3247/2010* (August 8, 2011). Therefore, it is recommended that Respondent forfeit 30 vacation days.

Respectfully submitted,



Amy J. Porter
Assistant Deputy Commissioner Trials

APPROVED
OCT 28 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KHARL PINNOCK
TAX REGISTRY NO. 933185
DISCIPLINARY CASE NO. 2012-8590

Respondent received an overall rating of 4.5 "Highly Competent/Extremely Competent" on every annual performance evaluation since 2004. [REDACTED] He was awarded 32 medals Excellent Police Duty and 3 medals for Meritorious Police Duty. Respondent has no prior disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner Trials