



POLICE DEPARTMENT

May 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Scott Samarisi  
Tax Registry No. 942495  
122 Precinct  
Disciplinary Case No. 2013-10143

---

The above-named member of the Department appeared before me on April 10 and December 19, 2014, charged with the following:

1. Said Police Officer Scott Samarisi, on or about April 3, 2012, at approximately 0134 hours, while assigned to the 122<sup>nd</sup> Precinct and on duty in the vicinity of [REDACTED] Richmond County, was discourteous to Person A, by telling him, in sum and substance, "Fucking punch me in the head?" and "Punch me and fucking see, dickhead."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Carrie Eicholtz, Esq. and Remi Groner, Esq., Respondent was represented by John Tynan, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

### FINDINGS AND ANALYSIS

The following facts are undisputed. On April 3, 2012, Respondent was working patrol with his partner in the 122 Precinct in Staten Island. They responded to a radio transmission at 0025 hours about a dispute at [REDACTED]. Earlier that night, Person A, a [REDACTED], and Person B were involved in a physical altercation during which both parties were injured. Person C, Person A's daughter, called 911 and an EMS ambulance arrived but they proceeded to treat Person B in front of the house. Some time later, Person C called 911 again to request an ambulance for her father. During Person C's second 911 call, an altercation between Respondent and Person A ensued, which was partially recorded in the background of the call. Person A struck Respondent in the face causing a laceration to his forehead. Two other responding police officers helped Respondent restrain and handcuff Person A. He was then taken into custody. Respondent was the only police officer struck during the incident.

The sole issue in this case is whether Respondent said, "Fucking punch me in the head?

Punch me and fucking see, dickhead" after being struck in the face by Person A.<sup>1</sup> At trial, Respondent denied the allegations. The CCRB entered into evidence a recording of Person C's second 911 call (CCRBX1), during which a voice can be heard in the background of the call saying, "Fucking punch me in the head? Punch me in the fucking face and see."<sup>2</sup> For the reasons set forth herein, this tribunal finds that Respondent made

<sup>1</sup> There were lengthy discussions during these proceedings regarding summonses that Person C and members of her family allegedly received from Respondent both before and after the incident at issue in this case. However, these discussions did not produce any evidence that was used during the trial.

<sup>2</sup> The charges and specifications include the word "dickhead," however this Court could not conclusively ascertain whether that particular word was used.



discourteous statements. However, I find that Respondent's use of profane language does not amount to actionable misconduct under these circumstances.

Person C testified that on the night of April 3, 2012 she was in the backyard of her house with her father, Person A and her grandfather. Respondent and his partner were the first police officers to arrive on the scene after 911 was called. In an attempt to determine what had occurred during the earlier altercation, Respondent was going back and forth between the front of the house where Person B was being treated by EMS personnel, and the backyard where the Person A and Person C were. Person C called 911 again to have a second ambulance sent to the house to treat her father. While Person C was on the phone with 911 for the second time, Respondent re-entered the backyard and attempted to speak to Person A.

According to Person C, Person A was asleep in a chair and unresponsive. Respondent asked to see Person A's hands in order to ascertain the extent of his injuries, startling him awake. Respondent then explained to Person A that it was a cross-complaint situation and if he was going to press charges against Person B, he was going to be arrested. Person A then said, "I'm not going to jail, I need to go to a [REDACTED]." Person C testified that Person A had wrapped his arms around Respondent's torso in an attempt to pull himself up from a seated position and accidentally struck Respondent in the face. He was then wrestled to the ground by the Respondent and two other responding officers. Respondent then said, "Fucking punch me in the head. Fucking hit me, go ahead" after her father was handcuffed. According to Person C, a struggle to restrain and handcuff her father lasted about five minutes, after which he was left face down on the ground for 20 minutes before being taken to the front of the house.



Police Officer Mirel Hoxha and Police Officer Matthew Manley also testified. Each testified that at approximately 0130 hours they responded to a radio run [REDACTED] in Staten Island. Both officers testified that they helped effectuate the arrest of Person A after they witnessed him punch Respondent in the face. Neither officer was struck by Person A that morning. Both officers also testified that they did not use profanity nor did they hear Respondent use profanity during the incident.

Respondent denied the charges. According to his account, after being [REDACTED] [REDACTED] for approximately an hour he instructed Person A to stand up and told him that he was being placed under arrest. Person A then stood up and replied that he was not going to jail. Respondent then reached forward to place Person A under arrest and was punched in the face, causing his glasses to fly off. Officers Manley and Hoxha helped Respondent bring Person A to the ground and he was placed in handcuffs after a brief struggle. He was then immediately brought to the front of the house by Officers Manley and Hoxha. Respondent testified that at no point during the altercation did he use profane language toward Person A.

This Court found Person C's testimony to be largely embellished and incredible. Her description of the events appeared to be an attempt to portray her father as a victim, which is simply not the case. Specifically, Person C testified that her father was asleep before being startled by Respondent. However, he can be heard in the background of the 911 call answering Person C's question about his age prior to any conversation with Respondent. She also testified that Person A involuntarily struck Respondent because he was startled awake after having passed out, an explanation that is simply incredible. It is undisputed that Person A was intoxicated after dangerously mixing alcohol with his



██████████ and had already assaulted Person B during the prior altercation. Therefore, it is not hard to believe that he belligerently struck Respondent after being told that he was being placed under arrest. Person C also testified on cross-examination that it took the officers approximately five minutes to handcuff her father and Respondent used profane language only after he was handcuffed. However, the profane language is heard on the 911 call almost immediately after the start of a commotion. Further, Person C testified that once her father was handcuffed and subdued, he was left face down on the ground for around 20 minutes before being brought to the front of the house. The Court finds this to be another embellished part of her testimony and credits the testimony of Officers Manley and Hoxha who both testified that Person A was picked up and brought to the front of the house shortly after being handcuffed.

Respondent denied using profanity after being struck in the face by Person A. However, based on the testimony proffered by all witnesses that no other individual was struck by Person A at any point during the altercation, there is no other explanation available as to who else would have said, "Fucking punch me in the head? Punch me and fucking see." Given the totality of the circumstances, it is likely that Respondent reacted negatively to getting punched in the face and his use of profane language was an impulsive response. Therefore, this Court credits the profanity heard during the 911 call to Respondent.

This tribunal has addressed the question of whether the use of profanity by a member of the service during a street confrontation with a civilian constitutes misconduct on a number of occasions. See Disciplinary Case No. 77896/02 (where an officer who told a belligerent and difficult suspect, "I'll do whatever the fuck I want out here," was



found not guilty of discourtesy); Disciplinary Case No. 69412/94 (where an officer who told a woman suspected of possessing a gun to “shut the fuck up” and to “put your fucking hands where I can see them,” was found not guilty of discourtesy); Disciplinary case No. 68632/94 (where an officer who told a screaming suspect who was causing a crowd to gather to “shut the fuck up,” was found not guilty of discourtesy); Disciplinary Case No. 78667/03 (where an officer assigned to keep an unruly crowd at a safe distance from a crime scene yelled, “get the fuck back,” had the charges against him dismissed).

Specifically, profanity has been found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation. *Police Department v. Iacurto*, OATH Index No. 1064/90 (June 13, 1990). Surely, in this case, the situation Respondent and his fellow officers faced was highly dangerous. Respondent’s use of profanity occurred during an extremely stressful encounter with an intoxicated [REDACTED] who was forcefully resisting arrest. While the Department does not condone the use of profanity and Respondent’s choice of words, his profane language can best be described as an excited utterance. This tribunal is also troubled that Respondent denied making these statements at trial. Respondent, however, was unexpectedly hit in the face while attempting to effectuate an arrest and it appears that he resorted to such language as a result of the shock of being struck and losing his glasses. Additionally, there is no evidence that Respondent was discourteous at any point prior to being struck or that he continued to use any profanity after the aforementioned statements.

The CCRB submitted approximately eight cases to support its position that Respondent’s use of profanity was purely gratuitous. In Police Department v. Matias and Bitchatchj, Respondents were found guilty of being discourteous and using profane

language without justification. OATH Index Nos. 1996-97/00. However, that case involved a routine car stop during which Respondents were found to have used profanity in the course of a normal conversation with the complainant that did not engender any type of high stress. The CCRB also proffered Police Department v. Milne to support its position that the discourtesy in this case was not used to gain any kind of compliance, but rather was purely offensive language. OATH Index No. 222/00. In Milne, the profane order "get back to the fucking car" was found to be completely unprovoked.

In Police Department v. Teeter, the Respondent was found guilty of discourtesy after making a threatening comment. OATH Index No. 590/01. In that case, the officer responded during an ongoing exchange with the civilian by saying, "If anybody is going to kill anybody, I'm going to kill you." That comment appeared to be a reference to the fact that the officer believed that he had almost been hit by the civilian's car. However, in the present case Respondent reacted to actually being assaulted by a belligerent individual resisting arrest, not a perceived threat of assault. Also, the language in Teeter is more threatening than the instant case.

Surely this Court can continue differentiating every case cited by the CCRB that is not on point, but that is not the role of this forum. Cases are decided on the underlying facts of each case and by a preponderance of the evidence presented at trial. Presenting case law that can be easily distinguished from the case at hand serves no legitimate purpose. This Court has consistently held that while police officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations. See, inter alia, Case No. 67797/93.

In conclusion, this Court credits the discourtesy heard on the 911 call to Respondent. However, given the totality of the circumstances, Respondent's use of profanity does not amount to actionable misconduct and he is found Not Guilty. As a result of Respondent's denial that he made these statements, it is recommended that Respondent be sent for consultation with his Commanding Officer regarding expectations that he remain courteous and professional in such circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Claudia Daniels-DePeyster", followed by a large, stylized monogram "CDM".

Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials

**APPROVED**

JUN 22 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER