



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

January 23, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Mark Whyte**
Tax Registry No. 939690
Police Service Area 6
Disciplinary Case No. 2015-14684

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on July 25, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14684

1. Said Police Officer Mark Whyte, while assigned to PSA 6, while on duty, on or about June 4, 2015, was discourteous to New York Police Sergeant Arber Uruci, in that said Police Officer screamed in a loud and boisterous manner, "I won't be disrespected in front of perps Sarge, I'm telling you to get in the car!"

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT -
GENERAL**

In a Memorandum dated October 18, 2016, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Mark Whyte Guilty of the sole Specification in Disciplinary Case No. 2015-14684. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of the totality of the issues and circumstances in this matter, I deem that a period of monitoring is warranted. Therefore, Police Officer Whyte's disciplinary penalty shall be the forfeiture of eight (8) vacation days and the imposition of one (1) year dismissal probation.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

October 18, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Mark Whyte
Tax Registry No. 939690
Police Service Area 6
Disciplinary Case No. 2015-14684

Charge and Specification:

1. Said Police Officer Mark Whyte, while assigned to PSA 6, while on-duty, on or about June 4, 2015, was discourteous to New York Police Sergeant Arbor¹ Uruci, in that said Police Officer screamed in a loud and boisterous manner, "I won't be disrespected in front of perps Sarge, I'm telling you to get in the car!"

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

Appearances:

For the Department: Javier R. Seymore, Esq.
Department Advocate's Office
One Police Plaza, 4th floor
New York, NY 10038

For Respondent: Craig R. Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, NY 10038

Hearing Date:

July 25, 2016

Decision:

Respondent is found Guilty

Trial Commissioner:

ADCT Robert W. Vinal

¹ Sergeant Uruci's first name is Arber.

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 25, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Assistant Department Advocate called Sergeant Arber Uruci as a witness. 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

It is not disputed that on June 4, 2015, Respondent was on duty, assigned to Police Service Area (PSA) 6, performing patrol duties serving as the driver for the Conditions Unit supervisor, Sergeant Arber Uruci. Both Respondent and Uruci were in uniform inside an unmarked Radio Motor Patrol car (RMP). In the vicinity of 2931 8th Avenue, the Bronx, Respondent observed two men on the street drinking alcohol from a bottle. The men placed the bottle on the ground. Respondent pulled over and stopped the RMP. Respondent and Uruci got out of the RMP and approached the men. Respondent wrote out summonses and handed them to the men. Respondent picked up the bottle and he and Uruci started to walk back towards their RMP.

Sergeant Arber Uruci testified that he asked Respondent to hand him the bottle because he wanted to throw it in the garbage in order to avoid an allegation that they had taken the bottle for their own use. Respondent replied, "I got it, Sarge." Uruci again told Respondent, "Give me the bottle," and Respondent again replied, "I got this." Uruci then asked Respondent a third time, "Mark, can I have the bottle?" In a loud voice, Respondent replied, "I won't be

disrespected in front of perps, Sarge." Uruci testified that he felt Respondent had spoken to him "disrespectfully." They re-entered the RMP and Respondent started driving. Uruci asked Respondent, "Is everything all right?" Respondent replied, "I told you to get in the car." When they arrived back at PSA 6, Uruci told Respondent, "Never speak to me like that again." Uruci reported what Respondent had said to him to the commanding officer (CO) of PSA 6. The CO agreed with Uruci that Respondent should be issued a Schedule A Command Discipline (CD).

Uruci denied that Respondent had told him that he wanted to throw the bottle away across the street away from the men who had been drinking. Uruci confirmed that he has known Respondent for years; that Respondent had served as his driver on a number of previous occasions; and that prior to this incident their interactions had always been "civil." Uruci testified that he felt that what Respondent had said to him "warranted a CD," not merely an informal instruction, because when he had asked Respondent if everything was all right, Respondent had not offered any excuse for his disrespectful comment such as that he was having a bad day or was having problems at home. Uruci confirmed that Respondent did not use any profanity or direct any insults at him.

Respondent testified that he picked up the bottle, turned it upside down to empty it out, and that as he and Uruci started to walk back towards their RMP, Uruci asked him, "Where are you going with the bottle?" Respondent replied, "I'm going to throw it in the garbage can across the street." Uruci then asked him, "Can I have the bottle?" Respondent replied, "Sarge, can I please throw it in the garbage can across the street. Look at the condition we're dealing with here. These gentlemen are agitated right now. I don't want to get this bottle thrown at the back of our heads." Uruci told him, "Get in the car." They re-entered the RMP and Uruci told him to

drive to PSA 6. After driving about ten blocks, Uruci asked him to hand him the bottle. Uruci got out of the RMP and threw the bottle into a garbage can. They then proceeded to PSA 6. Respondent testified that when Uruci told him, "Give me the bottle," he did not immediately hand Uruci the bottle.

Analysis

Respondent admitted that while he and Uruci were standing outside the RMP at 2931 8th Avenue, he told Uruci, "Sarge, can you get in the car?" (Tr. p. 37) and that after they were both back inside the RMP, he told Uruci, "I won't be disrespected in front of perps." (Tr. p. 36) Respondent's explanation that he made this last remark because while they were still outside of the RMP, Uruci "was raising his voice in front of" the men who had been drinking (Tr. p. 37), does not excuse or justify this remark. Thus, even if I credited Respondent's testimony that he only made this remark "clearly," and that he did not yell it at Uruci (Tr. p. 43-44), his action of scolding his supervisor by telling him, "I won't be disrespected in front of perps," clearly constitutes a discourteous remark.

Therefore, I find Respondent guilty as charged.

PENALTY RECOMMENDATION

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 July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum. Respondent has no prior formal disciplinary record.

The Advocate recommended that Respondent forfeit ten vacation days as a penalty. The Advocate cited two previous disciplinary decisions to support this penalty recommendation.

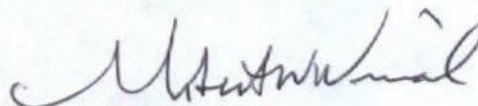
In *Case No. 2013-10510* (signed March 26, 2015), a seven-year police officer forfeited ten vacation days as a penalty for discourteously speaking to a sergeant in a loud voice. However, in that case, unlike here, when the sergeant attempted to reply, the officer talked over the sergeant preventing the sergeant from speaking. The Advocate also cited *Case No. 2014-12180* (signed May 1, 2015), where an officer who had been denied an emergency leave day by a sergeant forfeited ten vacation days as a penalty for speaking to the sergeant discourteously. However, the officer in that case also threw his uniform shirt and pants in the direction of the sergeant in front of other members of the service.

More recently, in *Case No. 2014-12605* (signed Nov. 19, 2015), an 11-year police officer who had no prior formal disciplinary record forfeited ten vacation days as a penalty for speaking to a sergeant discourteously. However, in that case, unlike here, the officer used profanity by telling the sergeant, "This is fucking bullshit," and she uttered this profane remark in an open area of the precinct in front of other members of the service.

In determining a penalty recommendation I have also taken into consideration that Respondent was a ten-year member of the service when this incident took place and that he has no prior formal disciplinary record.

Therefore, it is recommended that Respondent forfeit eight (8) vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARK WHYTE
TAX REGISTRY NO. 939690
DISCIPLINARY CASE NO. 2015-14684

Respondent received an overall rating of 3.5 on his 2015 annual performance evaluation, 4.0 on his 2014 annual evaluation, and 4.0 on his 2013 annual evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED] [REDACTED]
[REDACTED] He has no formal disciplinary record. He has no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials