



POLICE DEPARTMENT

December 27, 2011

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Yusef Thomas
Tax Registry No. 911171
Police Service Area 4
Disciplinary Case No. 84516/08

The above-named member of the Department appeared before me on June 29, 2011 and September 16, 2011, charged with the following:

1. Said Lieutenant Yusef Thomas, assigned to Housing Borough Brooklyn, on or about August 22, 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Lieutenant made a disparaging remark towards another Member of the Service known to this Department.

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

The Department was represented by Rita Bieniewicz, Esq, Department Advocate's Office. Respondent was represented by Rae Downes Koshetz, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. 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.

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SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Frank Manns and Robert Lombardi as witnesses.

Detective Frank Manns

Manns has been assigned to the 108 Precinct for a year and half as a Lieutenant's operator. Before this, he was assigned to Viper 13 on modified assignment pursuant to pending disciplinary action that has since been resolved. Respondent was his regular supervisor while he was assigned there. Manns had a "working relationship," not a "personal" one, with Respondent.

On August 22, 2007, Manns was working at Viper 13 and along with Detective Robert Lombardi, was assigned to closed circuit television monitoring. Manns testified that Respondent approached him and asked "if [Manns] could be friends with [Manns'] daughter." When Manns replied that he could be friends with his daughter, Respondent then asked whether Manns' daughter could tell Manns that "she gave a guy a blow job." Manns replied, "[E]xcuse me?" to which Respondent said, "You know, if she gave a guy a blow job, if she put it in [her] mouth." Respondent again said, "You know . . . if somebody put it in her mouth." Manns told Respondent, "No lieutenant, my daughter is 12 years old, she could never tell me anything like that." Respondent then tried to speak to Lombardi about his two sons, but Lombardi immediately stopped the conversation and told Respondent not to talk about his sons. Following the incident, Manns informed Respondent that he would be taking lost time. He then filled out a [Leave of Absence Report] and left work. Manns testified that he reported the incident the next day in person to Sergeant Qunda Stewart-Perry of Viper 13.

Manns stated that he was “very offended” by Respondent’s comments. The remarks made him feel uncomfortable, sad, and unprofessional. He explained that he was upset by the incident because he “draw[s] the line at people’s kids.”

On cross-examination, Manns acknowledged that he previously had been a Respondent in a trial. He acknowledged that he was found guilty of inappropriate touching and abusive conduct toward a janitor. The penalty was one year dismissal probation, the loss of 60 vacation days, and a forfeiture of the 34 days he spent on suspension before trial.

Manns admitted that at the time of the incident in this case, he had already filed a lawsuit against 18 or 19 members of the Department. He acknowledged that he spoke with “several individuals” about the lawsuit, but did not know whether he discussed it with Lombardi. Manns named Chief George Brown, the Chief of Detectives at the time, as a defendant in the lawsuit for his failure “to supervise other supervisors in regard to the handling of [his] complaint made against other individuals in the Department.” Manns alleged that Brown was the source of his trouble in Viper, including the incident with Respondent at issue in this case. His basis for this allegation was that Respondent nodded his head when Manns asked him whether Brown was the reason for problems he was having. After examining the amended complaint to refresh his recollection about it, Manns acknowledged that he sued Department members for discrimination, specifically unfair labor practices.¹ [Respondent’s Exhibit (RX) A is the amended civil complaint.]

Manns stated that one of the main reasons for the lawsuit was the comment Respondent made about his daughter performing oral sex. Upon being shown the original

¹ All exhibits were introduced for identification only.

complaint, Manns admitted that it did not include Respondent as a defendant and was filed on July 2, 2007, before the August 22, 2007 date when Respondent allegedly made the comments. [RX B is the original civil complaint.] Manns explained that the complaint “was amended by [his] attorney after she got all the facts.”

Manns stated that the judge in the case, Judge Bloom, did not dismiss the case but instead informed the parties that it would be in the best interest of all for Manns to drop the lawsuit. Manns testified that Bloom informed the parties that if the Department brought charges against Manns again, then the judge would have to be provided a copy of the charges and would intervene if necessary. Manns agreed to the terms and “cancelled” his lawsuit. He also agreed to one year probation. He did not know if any of this was in writing, but testified that the judge provided those terms. After looking at the settlement, he agreed that the written terms only stated that he would return to full duty if he dropped the lawsuit. [RX D is the Civil Stipulation Staying Action.] He explained that the written terms were “between [his] attorney and the Department” and that he “put everything in [his] attorney’s hands.”

Manns could not recall the amount of money that he was seeking to recover in the lawsuit. He stated that he was “looking for justice,” but admitted that “lost wages” were also part of his demand. Manns acknowledged that he has a Facebook page, but was unaware whether his profile listed “making money” as his interest. He explained that his girlfriend is the one who would have written that because she logs onto his account, writes on it, and talks to other people while pretending to be him.

Manns reiterated that he spoke to Stewart-Perry about Respondent’s remarks the next day, not five days after the incident. He explained that Stewart-Perry contacted him

and told him that she was unsure if she was going to make the complaint, but that she did later on. Manns admitted that he only “skimmed through” the transcript of Stewart-Perry’s call to the Office of Equal Employment Opportunity (OEEO) and so could not say whether she informed OEEO that she was reporting the incident on the same day that Manns informed her about it. Manns also did not recall telling Sergeant Stephen Dreyer, the OEEO investigator, that he waited until August 28, 2007 to report the incident to Stewart-Perry. [The parties stipulated that had Stewart-Perry been present to testify, she would have testified that she did not receive the complaint from Manns until August 28, 2007. RX G is a Department memorandum. RX F is an Investigating Officer’s Report.]

Manns testified that as Respondent was speaking about Manns’ daughter performing oral sex, he “leaned up against a table,” rubbing his genitals against it and illustrating the area where his penis was located. Manns stated that he was offended by this, but admitted that he did not mention it when he first spoke with OEEO. He explained that he “was very upset at the time” of the interview, and that as time went on, he began to think more about the things that occurred during the incident. Manns agreed that disclosing this would have been an important part of a truthful allegation. He further agreed that he amended his complaint in the federal lawsuit to include Respondent as a defendant, but did not know whether his attorney included this part of the incident in it. Upon being shown his amended complaint, Manns did not know whether his attorney included it. [RX E is Manns’ amended complaint.]

Even though Manns agreed that the sum and substance of his allegation was that Respondent asked him whether his daughter would tell him if she performed oral sex, Manns agreed that he also alleged that Respondent told him that he wanted Manns’

daughter to perform oral sex on him. Manns explained that in hindsight, he realized that when Respondent was leaning against the desk and speaking about his daughter performing oral sex, he was actually referring to her performing it on him. Manns acknowledged he interpreted Respondent's actions to mean this. Manns did not recall that in his deposition, he did not testify that he had to interpret Respondent's actions, but that Respondent actually verbalized his desire for oral sex. Although Manns could not recall that testimony, he acknowledged that the transcript indicated that he testified that Respondent twice asked him whether his "daughter can tell [him] if she sucks my...dick." [RX C is Page 186, Lines 6-9 of Manns' Civil Deposition.] He also agreed that the transcripts indicated that he also testified that Respondent "had stated that he wanted my daughter to perform oral sex on him" and described the emotional effect when "somebody tells you...that your little girl can...suck their...dick."

Manns stated that his exchange with Respondent on August 22, 2007 lasted about four or five minutes. He was sitting down with Lombardi behind him when Respondent walked in and started speaking about Manns' daughter in a way that he had never done before. Respondent asked him "out of the blue" about being friends with his daughter. While Manns complained to OEEEO about it, he did not remember whether he specifically alleged sexual harassment. He did feel harassed by Respondent because he believed "it was inappropriate for him to make that statement inside a workplace" about his daughter.

Manns also described additional allegations he made against Respondent. He testified that immediately after he informed Stewart-Perry about the incident, Respondent called him into the hallway of Viper to apologize to him. When Manns did not accept the apology, Respondent responded by telling him that even if he reported the incident,

Respondent would not be fired, but at worst would lose 30 days. Manns testified that Respondent “kept asking [him] not to make the complaint” and “kept poking [his] face.” Even though he admitted that Respondent never made actual contact with his face or body, Manns explained that Respondent’s index finger came close to his face and that “to me...it’s in my face.” That is why he reported to Dreyer that he was poked in the face. Manns agreed that Respondent waving his finger in his face made him fear for his personal safety, but admitted that he did not immediately report it to the Internal Affairs Bureau.

Concerning the same exchange, Manns did not remember accusing Respondent of hitting the wall so hard that he could feel wind in his ear. When shown his prior testimony in which he stated “I could feel the air when he was hitting the wall,” that the air went “past [his ear], and that he “could feel [Respondent’s] breath on him,” Manns stated that the incident was “fresh in his mind at the time” of his testimony. [RX H is Page 228, Line 13 of Manns’ Civil Deposition.] Manns remembered that Respondent “was very upset at the time” and that they were in “very close proximity.” Manns told investigators that at the time of this exchange “[Detective] Donawa was walking down the hallway and that he should have seen” it. He was unaware that Donawa stated that he never saw Respondent perform any of the acts described.

Manns believed that he also accused Respondent of attempting to bribe him. Manns explained that Respondent “offered me the 4 to 12 tour where I could make extra money if I didn’t go through with the complaint.” He was placed on this tour after he spoke to Stewart-Perry about Respondent’s remarks even though he previously requested and was denied that same tour.

Manns testified that Respondent never told him that he had difficulties with the way he performed his duties. As far as he knew, all of his evaluations were “good.” He stated that the only time he had been instructed on anything occurred because of a “mistake” on Respondent’s part. The Employee Management Division (EMD) contacted Manns after Respondent informed them that he left work early, but this was an error because he actually arrived late but left on time.

Manns admitted that he “scanned over” the material that was provided to him in preparation for his trial testimony. He reviewed information regarding a telephone conversation with Dreyer and “skimmed through” his prior testimony. He explained that he tried to focus on “what [Respondent] said to [him] about [his] daughter,” not on aspects such as his federal lawsuit or whether he felt air when Respondent hit the wall.

Robert Lombardi

Lombardi was a member of the Department for approximately 16 years. He resigned in December 2008 as a result of pending Department disciplinary action. Prior to his resignation, he was assigned to the Viper Unit on modified assignment. He currently owns his own business.

Lombardi testified that on August 22, 2007, he was assigned to Viper 13. He believed that on that day, he and Manns initially were having a “parenting” conversation about whether it was better to be friendly or a disciplinarian with their children. They were sitting at a desk in front of video cameras that they monitor, and were five feet apart at most. He testified that Respondent then asked whether Manns “would be friendly with his daughter if she came and told him that she was in a car and [had] given a boy a blow job.” Lombardi stated that these comments appeared to upset Manns, who responded by

telling Respondent that his daughter would not tell him that. He did not recall having any further conversation with Manns at that point because Manns “just seemed angry and...wanted to end the conversation.” Respondent then asked Lombardi about how he disciplined his children. Lombardi responded that it “depended on the situation” and that “unless you have children, you can’t say how you are going to deal with a child in a particular situation.” To his knowledge, Respondent does not have any children.

Lombardi testified that he considered Respondent’s comments offensive. He admitted that even though he is aware of the requirement that members of service report any observed misconduct, he did not report Respondent for making those remarks. He explained that at that time, he was concerned with his own issues and not those of the others in the command.

Since leaving the Department, the only time he has seen Manns was at this trial. They do not have a personal relationship outside of work. Nor does Lombardi have a relationship with Respondent. Since leaving the Department, he saw him once at the Department’s “Pension Section,” but did not discuss the case or Manns with him.

On cross-examination, Lombardi testified that he resigned after 16 years with the Department because he had his own vehicle business, was assigned to Viper, and was served with Charges and Specifications. He agreed that even though he contributed towards a pension, he did not receive one because he quit rather than retire—a fact that did “not necessarily” leave him with bad feelings about the Department. He stated that he never considered that if he had stayed in the Department for 20 years, then he would have collected a large sum of money considering the life expectancy of a person in his forties.

He acknowledged that it bothered him to leave, but it “was a choice that [he] decided to make.”

The “issue” that Lombardi alluded to on direct examination was that he was accused of stealing, an act which he denied. Lombardi acknowledged that it was a “possibility” that he would lose if his case went to trial. He did not want to go through a long, drawn out trial. Since he already had a business, he decided to resign even though he was innocent and would lose his pension.

Lombardi stated that on the date of the incident in this case, he was unaware that Manns had an ongoing federal lawsuit against members of the Department. Even though they were friendly in the workplace and had discussions while there, he did not think that Manns mentioned the lawsuit to him. He also did not remember other people speaking about the case.

Lombardi did not remember the date when Respondent made the remarks to Manns, assumed that it occurred in the morning although he could not specifically recall, and did not remember the length of the entire conversation. Lombardi believed that the exchange between Respondent and Manns lasted about “a minute or two.” When confronted with his official Department interview testimony from October 2007 in which he stated that the conversation lasted 15 minutes, he stated that it was “possible” that it lasted that long. He was unable to remember any other comments made during those 15 minutes besides Respondent’s remarks, which occurred “closer to the end” of the conversation. He agreed that his recollection was that there was only a verbal conversation between Respondent and Manns. Lombardi did not remember Respondent rubbing his genitals across a desk, which he agreed was an act that likely would draw his

attention. He stated that he did not recall anything else happening after the conversation, and assumed that Manns continued working.

Lombardi did not recall ever speaking with Manns about the incident. He testified that Manns never mentioned the OEEO complaint to him, and was unaware of it until his interview. Lombardi also stated that he first became aware that he was going to be a witness in this case "a year ago or so." In the 15 to 16 months between the incident and his resignation, Lombardi did not speak with Manns about his complaint in this case and could not recall ever discussing the federal lawsuit with him.

On further questioning, Lombardi described the layout of Viper 13. He stated that it was a small room, 12 feet across by eight to ten feet wide. Inside, there was a six foot long desk, two controls to maneuver cameras, a command log to be filled out, and racks of TVs on the wall to monitor the camera feeds. There were additional chairs in the back of the room at a computer.

Lombardi testified that he was probably sitting during his conversation with Manns, but could not be entirely sure since there were times when they had to stand in order to check license plates. He could not remember whether he was monitoring the cameras while having the discussion with Manns on the date of the incident. He could not recall where Respondent was at the time, or whether he was sitting or standing.

Respondent's remarks to Manns stood out to Lombardi because he remembered thinking that Manns was more restrained than he would have been if someone spoke about his child the way Respondent did. After Respondent's comments, Lombardi continued the conversation with him, telling him that unless he had children, he cannot

tell people how they should deal with their children. He then ended the conversation because he felt that the situation could “escalate” if the discussion continued.

Lombardi acknowledged that he was assigned to the Viper Unit on the date of the incident because he was facing disciplinary charges. He clarified that the charges that resulted in his assignment to Viper were different than the ones that caused him to resign although they were all part of the same case. He was served with the charges that resulted in his resignation after the incident in this case. He agreed that he resigned without the approval of the Police Commissioner.

On recross examination, Lombardi stated that he could not remember what he said to Respondent following his comments to Manns, but agreed that it was possible that he told him that his comments were inappropriate. When confronted with his interview testimony, he agreed that he told investigators that his response to Respondent was “I like to be friendly with my child but when my child does something out of line, I am going to discipline them.”

Respondent’s Case

Respondent called Police Officer Edwin Delpilar (retired) and Detective Daru Donawa as witnesses, and he testified in his own behalf.

Police Officer Edwin Delpilar (retired)

Delpilar retired from the Department in September 2010. He has known Respondent since 2007 or 2008 when Respondent arrived at his command, Police Service Area (PSA) 4. Respondent was one of the supervisors on his tour.

Delpilar described Respondent as a person who was “thorough,” “knew the job,” and “also knew how to talk with the public.” Delpilar added that Respondent was a “good supervisor” who was “fair with the officers.” As a subordinate, Delpilar was “comfortable working with him.” He testified that Respondent conducted himself “by the book” and as a result, he “never saw anything personal” from him. Respondent was approachable with questions and would provide a “straight answer.” Respondent did not have a reputation for vulgar language.

During cross-examination, Delpilar stated that he does not have a personal relationship with Respondent outside of the Department.

Upon questioning by the Court, Delpilar testified that he did not recall Respondent ever making remarks of a sexual nature in the command. Delpilar added that “if anything, he would not allow” those remarks. As for Respondent’s reputation as a supervisor, Delpilar stated that officers knew that “when you came to work, you came to work.”

Detective Daru Donawa

Donawa is currently assigned to the Queens Homicide Task Force. He was previously assigned to the Viper Unit for approximately a year and a half. That is where he met Respondent and Manns.

Donawa testified that on the first day that he was assigned to Viper around 2007, Manns spoke with him. Donawa described the exchange as “more of a dictation” as opposed to a conversation. Manns asked Donawa whether he was an officer or a detective, and then asked his grade of detective. Following this exchange, Manns,

without being prompted, showed him the paperwork for his lawsuit against members of the Department.

Donawa also described an incident in which Manns threatened to include him in the lawsuit. Donawa stated that during a time when Donawa was trying to make money in the real estate industry, Manns told him that if he made any money, all he had to do was “brush up against [Manns] and [he would] take [Donawa] for at least ten percent.” Donawa asked Manns if he really would do that, to which Manns replied that it was “about the money.”

Donawa could not remember whether he witnessed a conversation on August 28, 2007, but did remember a time when he was walking into the Viper base and saw Respondent and Manns having a conversation. He testified that although he did not hear their conversation, nothing stood out about the tones of their voices. Respondent also did not make any gestures that drew his attention. Donawa acknowledged that he may have greeted them, but did not stop “to indulge in the conversation.”

Donawa first met Respondent when he was assigned to Viper. He described him as “courteous” and “a fair gentleman.” He added that Respondent never did anything to hurt him or anyone else at Viper. He would “always try to accommodate” people when they made requests. Respondent “came [to work] and he did his job,” and was not one who went out for drinks after work with Donawa.

During cross-examination, Donawa acknowledged that he was in Viper because he was charged with attempting to patronize a prostitute. He accepted an adjournment in contemplation of dismissal in connection with those charges. He agreed that the Department also charged him with patronizing or attempting to patronize a prostitute, and

that he pled guilty to the charges. He also agreed that in his official Department interview concerning that case, he admitted that he attempted to patronize a prostitute. Donawa explained that he stated that he was guilty in order to “get on with [his] life.”

Donawa reiterated that Manns told him that if he ever came into money, he would only have to brush against Manns for him to file a lawsuit. Donawa did not report this exchange to a supervisor because he did not believe it was necessary to do so.

Donawa could not remember whether he was present for work on August 22, 2007, but knew that he was not present for the conversation between Respondent and Manns concerning child rearing and Manns’ daughter.

Donawa acknowledged that on August 28, 2007, while walking into the Viper Unit, he did not pay special attention to the conversation between Respondent and Manns. He agreed that he did not stop to watch Respondent and Manns, but instead kept walking. He did not hear any of their conversation.

Upon questioning by the Court, Donawa described the conversation between Respondent and Manns as “normal.” At the time, he was trying to mind his own business. He acknowledged that even if the exchange between the two sides had been heated, he still “would have continued on.”

Respondent

Respondent, a 19-and-a-half year member of the Department, is currently assigned to PSA 4. He has never before been the subject of Department charges. During the course of his career, he has received honors from a state senator and the community board. He has also been awarded numerous Department medals, including the Combat Cross. In June 1993, he observed a shooting and approached the shooter, prompting the

shooter to throw his gun down. In October of that year, he struggled with another man with a gun before placing the man under arrest. That same month he became involved another struggle over a gun. During this struggle, he was bitten and shot in the arm. His name has been submitted for the New York State Chief of Police Medal of Honor.

While assigned to the Viper Unit, Respondent and Manns maintained a professional relationship and engaged in light conversation. Manns informed Respondent that he was suing numerous members of the Department. Manns talked openly about the litigation and even asked Respondent for advice at one point. Respondent described Manns as “a subpar employee that was very angry with the job supervision.”

Manns and Lombardi worked together and were “overly friendly” with each other. Respondent at times needed to discipline them. He explained, “Manns at times was very angry. He talked in a rude way to me when I tried to talk to him about his work performance and attitude.” Once or twice Manns rudely asked Respondent about changing his tour to “4 to 12.” Manns’ tours were eventually changed because he and Donawa “did a mutual [swap] and because of manpower issues that didn’t come from me that came from over at PSA 1.” About Lombardi, Respondent stated, “He would do things like he didn’t care about his work ethic or about getting in trouble, he just didn’t focus.” Lombardi quit the day before his Department trial was set to begin.

Respondent testified that on August 22, 2007, Manns asked him in a rude manner about changing his tour. Respondent replied to Manns, “We are not friends. I can be friendly with you, but we are not friends.” He proceeded to ask Manns if he was friends or friendly with his daughter. At that point, Lombardi asked Respondent if he had children, and Respondent replied that his girlfriend was pregnant. According to

Respondent, this was the sum and substance of the conversation; he did not make any remarks about oral sex. He would not say something like that, as it is not in his character to do so. He never told Manns that he wanted his daughter to perform a sex act, nor did he throw anything at Manns.

On August 28, 2007, Respondent apologized to Manns. He explained that he did not apologize for his conduct but rather for the way that Manns felt. He further explained, "The attitude and atmosphere in Viper is already sullen, I did not want to add to it. I wanted him to understand if he is upset that I mentioned his daughter, I can understand that." This conversation took place in the hallway and Donowa walked by. Respondent later learned that he was named by Manns as one of several defendants in a civil lawsuit.

During cross-examination, Respondent testified that he did not know if Manns and Lombardi socialized outside of the workplace. Respondent at times disciplined Manns verbally or in the Minor Violations Log, but never issued him a Command Discipline. As far as he could recall, he did not have a conversation with Stewart-Perry about the incident before apologizing to Respondent. When asked why he apologized, he explained, "If Manns felt that I did something, it's my responsibility to apologize for the way he felt. I need my employees to get done with effectiveness and efficiency what I need them to get done and . . . if his feelings was hurt, that is not going to add to the atmosphere of Viper, it's just going to escalate." Prior to the August 22, 2007 incident, Manns had mentioned to Respondent the lawsuit that he had filed.

Upon further questioning, Respondent denied speaking in a threatening manner during his August 28, 2007 conversation with Manns. Although he normally "speaks

with his hands,” he did not speak with his hands on that day. He described the conversation:

[Manns] didn't go into details about it. He just said, "I'm offended about what you said about my daughter," and I stepped back and I said, "What are you talking about; explain to me what's going on her." He did not go into detail and that's when I said, "Look . . . if you feel that I offended you because I mentioned your daughter, I apologize because the way you feel."

Respondent once put Manns in the Minor Violations Log for being boisterous and failing to comply with instructions to report directly to Sergeant Funchess in the Performance Monitoring Unit. Respondent never issued Lombardi a Command Discipline, but he once had to verbally reinstruct him after Lombardi used somebody else's computer code to download something that was outside the scope of his authority.

On redirect examination, Respondent testified that he never rubbed his crotch against a desk in front of Manns.

On further questioning, he stated that he never offered Manns a *quid pro quo* for dropping the lawsuit. He was no longer assigned to Viper when he received notice that he was a named defendant in the lawsuit.

FINDINGS AND ANALYSIS

Respondent stands charged herein with the sole specification in that on or about August 22, 2007 he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Lieutenant made a disparaging remark towards another member of the service known to this Department. It is alleged that Respondent made a remark of a sexual nature regarding a subordinate's daughter.

Manns, the complainant in this matter was found to be a less than credible

witness. Manns testified that as he sat at work in the Viper Unit on August 22, 2007, Respondent approached him and began to ask him questions about his daughter. Respondent asked him if he [Manns] could be friends with his own daughter. When Manns replied in the affirmative, Respondent then asked Manns if his daughter could tell him, "You know, if she gave a guy a blow job[,] if she put it in [her] mouth." Manns testified that he was offended by the remark and told Respondent that his daughter was only 12 years old and could not tell him anything like that. Manns further testified that as Respondent made the oral sex remarks, he leaned up against a table rubbing his genitals against it and illustrating the area where his penis was located. Manns said that he was so offended by the entire situation that he asked Respondent for lost time and he left for the rest of the tour.

Manns testified that he filed a federal lawsuit against the Department. He noted that one of his original reasons for filing the lawsuit was based on the remarks made by Respondent. Yet when Manns was shown a copy of his original federal complaint filed on July 2, 2007 during cross-examination (RX B), he acknowledged that there was no mention of Respondent in the complaint. He also acknowledged that the suit was filed on July 2, 2007 and the incident he alleged with Respondent did not occur until August 22, 2007, more than a month later. He further agreed that his federal lawsuit named 18 or 19 members of the service not including Respondent.

Manns also agreed during cross-examination that he filed a complaint with OEEO. He admitted, however, that he made no mention of Respondent rubbing his genitals against a table in that complaint. Manns admitted that he reported to the OEEO investigator that Respondent tried to get him to drop his complaint and poked his

[Respondent's] finger in his face. Manns explained that Respondent did not actually make contact with his face, but that he pointed his index finger so close to his face that he felt threatened.

Manns acknowledged that he told someone that Respondent wanted Manns' daughter to perform oral sex on him [Respondent]. Manns explained that he drew that conclusion from the fact that Respondent was leaning against the desk as he was speaking about Mann's daughter performing oral sex, so he interpreted his actions to mean that he [Respondent] wanted oral sex performed on him [Respondent]. Manns further testified that he could not recall stating during his federal lawsuit deposition that Respondent told him, "So your daughter can tell you if she sucks my...dick." He acknowledged, however, that if that is what the deposition stated, that he must have said it.

Manns was confronted during cross-examination with his Facebook profile which states that he is about "making money." He explained that his girlfriend logs in on his Facebook page and pretends to be him.

Manns acknowledged that he also accused Respondent of bribing him. He testified that Respondent told him that he could work the 4 to 12 tour and make extra money if he did not go through with the complaint. Manns explained that he previously put in to work that tour but was denied. He speculated that Respondent made the tour change after Manns spoke to Sergeant Stewart-Perry in the command about the oral sex allegation.

Manns seems to have a distorted view of reality. He alleged that he filed a federal lawsuit based on Respondent's oral sex remarks, yet the original complaint lacked an allegation against Respondent. Manns said that Respondent wanted his daughter to

perform oral sex on him, yet Manns' original statement did not allege that, he interpreted the statement to mean that. Manns alleged to an OEEO investigator that Respondent poked his finger in his face, but at trial he stated that he just pointed at him close to his face. Manns had a lackadaisical attitude with respect to the actual remarks that he alleged were uttered by Respondent. At one point he said Respondent asked about his daughter giving someone a "blow job." At another point he alleged in his amended federal complaint that Respondent said, "So your daughter can tell you if she sucks my...dick." Manns also stated that he had never been disciplined by Respondent. Yet Respondent testified that while he did not issue formal discipline to Manns, he did have to instruct him at times when they had discussions on his work performance and attitude and Manns was very angry or rude. Respondent recalled an occasion on January 24 when Manns failed to immediately report to Sergeant Funchess in EMD as he had instructed him to do for performance monitoring. Manns questioned the order and proceeded to the Viper Unit to call and verify the information before reporting. Respondent said Manns was written up in the Minor Violations Log at the command.

Manns further acknowledged that he had been a Respondent in the trial room and was found Guilty of inappropriate touching and abuse toward a janitor. Although Manns stated that he denied all the allegations as he testified at that trial, the trial commissioner found that he had presented insufficient evidence to rebut the charges and therefore found him Guilty. The trial commissioner in that matter recommended a penalty of 60 vacation days and one year dismissal probation which included the loss of the 34 days he served on pretrial suspension. Manns agreed that a stipulation of settlement was entered into with

respect to his federal lawsuit that if he dropped his federal lawsuit, he would be returned to full duty. Manns used the lawsuit process to help his disciplinary situation.

Manns also embellished on his testimony in this proceeding when he felt that it would enhance his case. Particularly, alleging that Respondent rubbed his genitals on a table, a statement that he never made prior to his trial testimony. In addition, Manns alleged that Respondent tried to bribe him by telling him he could work a 4 to 12 tour if he dropped his lawsuit. Respondent testified before this forum that Manns worked a 4 to 12 when he did a mutual tour exchange with Donawa and for manpower issues that did not come from him [Respondent] but from PSA 1. The end result of all of Manns' testimony was that he was found to be an incredible witness not worthy of belief.

As a witness to Mann's allegations, the Department called former police officer Robert Lombardi. Lombardi admitted that he resigned from his position as a police officer after 16 years of service without the approval of the Police Commissioner amid disciplinary charges involving stealing. He testified that he had a vehicle business and chose not to go through a lengthy trial. He also testified that he did not calculate the value of the pension he would lose as a person in his forties when he made the decision with his wife to resign after 16 years of service. He stated that he did not have any bad feelings toward the Department, although it did bother him that he left. He said that it was a choice that he decided to make.

Lombardi testified that he was assigned to the Viper Unit on the incident date based on Charges and Specifications that he received, but that his decision to resign his position was based on a new set of Charges and Specifications that involved stealing. Lombardi explained that he was innocent of the charges, but chose to resign and lose his

pension. He acknowledged that there was a chance that he would lose his case if it went to trial.

Lombardi said that he was sitting in the Viper Unit with Manns and they were having a discussion on whether to be friendly or a disciplinarian with their children. Respondent then asked Manns if he would be friendly with his daughter if she came and told him that she was in a car and had given a boy a "blow job." Lombardi testified that Manns seemed upset by the comment and told Respondent that his daughter would not tell him something like that. Lombardi said Respondent then asked him how he [Lombardi] would deal with his children and he told Respondent that it depended on the situation, but one could not state how he would react if he did not have children. He explained that to his knowledge, Respondent did not have any children. Lombardi said that he quickly ended the conversation with Respondent because he did not want it to escalate.

Lombardi testified that Respondent's comments to Manns was offensive and that he was aware of the Department requirements to report observed misconduct, but he did not report the remarks to anyone because he was concerned about his own issues. He testified that the conversation between Manns and Respondent lasted a minute or two; but when he was confronted with the statement he made at his official Department interview held in October 2007, he said that the conversation lasted about 15 minutes. Lombardi could not recall any other words that were exchanged during the conversation. He could not recall what he was doing or what Respondent was doing in the Viper Unit at the time of the remarks. He could not recall if they were standing, sitting, or observing the

monitors at the time. He also could not recall the date when the incident occurred. He denied at any point seeing Respondent rub his genitals against a table during the incident.

Lombardi stated that he was unaware of a federal lawsuit being filed by Manns or the existence of an OEEA complaint being filed with the Department until he was called in for a Department interview. He stated that he did not discuss the matter with Manns after the incident.

I found Lombardi's testimony to be less than credible. The fact that he testified that he served 16 years with the Department and never calculated the value of the pension he would be losing if he resigned without the permission of the Police Commissioner was incredible testimony. In addition, his comments on the alleged blow job remarks made by Respondent were not the same as Manns'. Manns alleged that Respondent asked about his daughter giving someone a blow job. Then Manns alluded to Respondent wanting his daughter to give him [Respondent] a blow job. Lombardi testified about Manns' daughter giving a blow job to a boy in a car.

Respondent denied the allegation against him. He denied rubbing his genitals on a table. He denied the oral sex remark, and he denied the *quid pro quo* of telling Manns he could get the tour he desired if he dropped his lawsuit. In his defense, Respondent called two character witnesses. Delpilar testified that, as a police officer, he worked for Respondent in PSA 4 from 2007 or 2008 until his retirement in September 2010. He said that Respondent was a supervisor during his tour. He described Respondent as a "thorough" supervisor who "knew the job" and was fair to the police officers he supervised. When questioned by the Court as to whether Respondent made jokes of a sexual nature in the command, Delpilar said he did not and was the type of supervisor

who would not tolerate such comments at work. Donawa testified to essentially the same facts regarding Respondent as a supervisor. In addition, he noted that Manns always seemed to be referring to a lawsuit and even threatened to sue him [Donawa] if he rubbed him the wrong way. This was corroborated by Respondent who said Manns always talked about his lawsuit and even sought advice on it from Respondent. Manns seems to be quite litigious.

Given the lack of credible testimony on the part of both Manns and Lombardi, without any further corroboration, Respondent is found Not Guilty.

Respectfully submitted,

*C. D. D. by
Marta & Ray L.*

Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

APPROVED
MAR 13 2012
Ray W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER