



POLICE DEPARTMENT

November 29, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Trina Daniels
Tax Registry No. 921260
77 Precinct
Disciplinary Case No. 85667/09

The above-named member of the Department appeared before the Court on July 29, 2010, charged with the following:

1. Said Police Officer Trina Daniels assigned to the 77th Precinct, on March 31, 2009 did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Officer provided misleading accounts of her conversation with members of the Department Advocate's Office during a Department Hearing, to wit; said officer testified that she did not recall telling members of the Department Advocate's Office on February 10, 2009 that she would not bring her daughter in to testify at a Department Hearing when in fact she did.

P.G. 203-10 Pg. 1, Para. 5

GENERAL REGULATIONS

2. Said Police Officer Trina Daniels assigned to the 77th Precinct, on or about and between October 22, 2008 and February 10, 2009, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit; having changed said officer's residence, did fail and neglect to notify the New York State Department of Motor Vehicle about an address change as required.

P.G. 203-10 Pg. 1, Para. 5

GENERAL REGULATIONS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to Specification No. 1. She pleaded Guilty to Specification No. 2 and testified in mitigation of the penalty. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification No. 1. The Respondent, having pleaded Guilty to Specification No. 2, is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Assistant Department Advocate Pamela Naples and Executive Agency Counsel Nancy Slater as witnesses.

Assistant Department Advocate Pamela Naples

Naples had been an Advocate with the Department Advocate's Office (DAO) for approximately two years. Prior to working for the Department, Naples worked in a civil litigation firm for two years where she drafted complaints, requests, and motions for summary judgment for plaintiff clients. Before that, Naples worked for the Legal Aid Society in Nassau County on criminal cases. Naples estimated that she had prepared around 100 witnesses for trial throughout her career.

Naples testified that she was assigned to Police Officer Kenneth Douglas's two cases that came to the Department Advocate's Office after a domestic dispute Douglas had with the

Respondent. The first case arose after a 911 call was made by Respondent's daughter, Tykasia Daniels. Douglas was charged with "failing to provide helpful information to responding officers" in their investigation by not identifying himself or the Respondent properly as members of the service. Douglas also allegedly failed to request that a supervisor be present. Naples said that the case was tried together with a case stemming from an assault charge that was brought due to the same domestic dispute.

Naples testified that she included the Respondent and Tykasia on the witness list for Douglas's trial. Naples testified said that on February 10, 2009, the Respondent was brought into the Department Advocate's Office for trial preparation, or "trial prep." Naples explained that she mainly wanted to speak to the Respondent in order to ascertain whether she was willing to bring Tykasia into the office to be prepared by Naples to testify at Douglas's trial. When Naples asked the Respondent about bringing in Tykasia, who at the time was a minor, the Respondent refused to permit this but did not say why. Naples further testified that the Respondent was not cooperative during her own trial preparation, repeatedly asking, "Why do you need me if you have the tapes" of the Respondent's official Department interview. The Respondent also seemed to have trouble recounting the details of the night of the incident.

Naples testified that due to the Respondent's lack of cooperation during her trial preparation, she was forced to find her supervisor, Nancy Slater, and ask her to step in. When Slater spoke to the Respondent, Naples was in the room at first, but left to find a uniformed supervisor, as the Respondent was still being difficult.

Naples testified that she subpoenaed Tykasia by mail at two separate addresses. One was 28 Monroe Street and the other was 891 Greene Avenue, both in Brooklyn. Naples had the subpoenas mailed after personal service was unsuccessful.

Naples testified that in the end, she was not able to produce Tykasia at trial. The Respondent testified on the second day of Douglas's trial, March 31, 2009, where she gave testimony regarding a second domestic incident in which she was the complainant and which resulted in Douglas being arrested. Naples also testified that she asked the Respondent whether they had a conversation about producing Tykasia, but an objection was sustained on the grounds that Naples was herself a witness to that conversation. Naples wanted the Respondent to admit that she did not allow Tykasia to speak to the Department Advocate's Office, so that Tykasia's out-of-court statements could be admitted as hearsay. Naples then asked the Respondent whether anyone had asked her to bring Tykasia in to testify. The Respondent said that she did not recall. This took place on re-direct examination. Department Exhibit (DX) 1, a portion of the Douglas trial transcript, reflects that Naples renewed the application to present Tykasia's hearsay statements during the Respondent's re-direct examination. The Court allowed the hearsay statements in.

Naples was shown DX 1 and agreed that the transcript reflected the questioning between her and the Respondent. Naples testified that the answers the Respondent gave were different from those given during trial preparation.

On cross-examination, Naples clarified that she asked three questions regarding Tykasia, with the last being, "You don't think so?" She agreed that the answer given by the Respondent was "no."

Naples agreed that she felt the Respondent was not cooperative during trial prep. After Slater came into the room, Naples returned to speak with the Respondent. Naples admitted that while she felt the Respondent's non-cooperation could be misconduct, she did not stop the trial prep to allow the Respondent to speak with her lawyer or her union representative.

Naples believed that the Respondent had a right to forbid DAO from speaking to Tykasia. That was why the subpoenas were served. Naples admitted that the Patrol Guide does not require a member to produce a child for a Department trial.

Naples acknowledged that Captain Richard Gubitosi was also brought into the room and consulted about the case.

On re-direct examination, Naples said that because the Respondent was a witness and victim of domestic violence during the trial prep, there was no need for her attorney to be present. Naples agreed that she asked the Respondent to bring in Tykasia as the person who placed the 911 call.

Executive Agency Counsel Nancy Slater

Slater had worked for the Department for a little over two years and served as Special Counsel to Julie Schwartz, the Deputy Commissioner for the Department Advocate. Slater oversaw the Advocates' trials and did some training. Prior to working here, Slater worked at the Kings County District Attorney's Office (DA's Office) for seven years as a trial attorney, trying mainly "sex abuse cases." She testified that she had probably prepared for hundreds of trials while at the DA's Office, and prepared more than a hundred witnesses for those trials.

Regarding the date in question, February 10, 2009, Slater said that she was working on that day. Naples told her that she had been trying to prepare the Respondent for trial, but that the Respondent had trouble remembering some details from the incident. Slater said that she was summoned to try to refresh the Respondent's memory, which she did as she had the transcripts of the official Department interviews. Slater stated that even with the interview transcripts, the Respondent continued to claim that she did not remember what happened. This, to Slater, was a

sign of non-cooperation. Slater testified that it was clear the Respondent was being uncooperative as opposed to truly not remembering. The Respondent would read the applicable passage of the transcript; right after putting it down she would be questioned and respond by claiming not to recall the facts.

After speaking with the Respondent, Slater again spoke with Naples discussing the lack of cooperation and apparent lack of interest in being helpful. Slater also suggested to Naples that a uniformed supervisor should come in to speak to the Respondent in order to encourage her to remember the details she would need to testify. This was when Gubitosi was sent in. Slater was not in the room when Gubitosi spoke with the Respondent.

On cross-examination, Slater said that she may have discussed the Respondent with Schwartz. Slater admitted being very frustrated by the non-cooperation, and as such might have spoken to Schwartz to ascertain whether this constituted misconduct. Slater and Schwartz agreed that "if we brought her back again, if we speak to her again, that she would ultimately cooperate." Slater chose Gubitosi to meet with the Respondent because he was a high-ranking uniformed member, who she believed could emphasize to the Respondent the importance of cooperating at trial. Slater admitted that she brought Gubitosi in to make the Respondent "aware of possible ramifications of her purposely not remembering." She stated that she was trying to protect the Respondent from perjuring herself.

Slater agreed that she knew how to get in touch with the law firm that represented police officers under the contract with the Patrolmen's Benevolent Association (PBA). Because she did not believe that the Respondent's behavior was yet misconduct, she did not contact the firm or suggest that the Respondent contact a PBA delegate. After Gubitosi and the Respondent spoke,

Slater believed she was going to be cooperative so there was no need to contact the representatives.

On re-direct examination, Slater agreed that because the Respondent was being questioned as a witness and victim of domestic violence in Douglas's case, and was not present for an official Department interview, it was not necessary for an attorney to be present. Slater stated that at the end of their conversation, the Respondent was cooperative with Slater.

On re-cross examination, Slater recalled her experience in the DA's Office that if a witness were to "cross that line" (i.e., committing perjury), the witness should have an attorney or other representative available. As such, Slater agreed that because she never had the Respondent contact her attorney, she considered the behavior to have not crossed a line.

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

The Respondent had worked for the Department for twelve years at the 77 Precinct. At the time of trial she was the highway safety officer. Regarding the charge of failure to notify the Department of Motor Vehicles (DMV) of an address change, which the Respondent mitigated to, she explained that her move on or around October 22, 2008, from 28 Monroe Street to 891 Greene Avenue in Brooklyn was not of a long distance. The Respondent had a New York State driver license and owned a vehicle registered in the state. She stated that she did not notify the DMV about the move due to being busy with her children and work. She did not realize that she was required to notify not only the Police Department but the DMV as well.

The Respondent testified that she had four children, ages 18, 9, 7, and 4. Tykasia was the oldest, born July 16, 1992. Douglas was the father of the youngest three children. The Respondent testified that there was a domestic incident between Douglas and her, which resulted in charges and specifications being brought by the Department against Douglas.

The Respondent stated that during the meeting she had with Naples on the subject of Douglas's case, she remembered being given the transcript of her official Department interview and that other people were brought into the room. She also said that she remembered being questioned about the domestic incident and telling Naples what she could recall. The Respondent asserted that she did not recall Naples asking her to have Tykasia available for testimony. The Respondent contended that if that had happened, she would have talked with Tykasia about it because they "had that type of relationship."

The Respondent admitted that she was emotional during her conversation with Naples and started crying when she read the interview transcript. She was concerned about her children and her job, and how her children might be affected if Douglas's job was threatened by this case. She said that she wanted to cooperate with DAO, and felt she did so to the best of her ability by telling the truth to everyone who spoke to her there. She did not, however, recall everything from the domestic incident during trial prep.

When the Respondent was called to testify against Douglas, she appeared and testified truthfully. DX 1 accurately reflected the answers she gave at Douglas's trial concerning Tykasia's allegedly-requested appearance.

On cross-examination, the Respondent confirmed that her address on the date of trial prep, February 10, 2009, was 891 Greene Avenue, a three-dwelling building. She lived there for four months by that date. When shown the certified mail receipt that was sent to that address

(DX 2), she pointed out that the address was spelled wrong, but admitted that it probably would not have affected its delivery. She stated that some tenants at that address had problems receiving mail because they were unable to get keys to their mailboxes.

The Respondent testified that prior to living on Greene Avenue, she lived at 28 Monroe Street, Brooklyn, a two-family home that she owned, for about six or seven years. She still owned the property as of March 24, 2009. DX 3 was the return receipt for a piece of certified mail sent to the Monroe Street home on or about that date. The Respondent admitted that as of March 2009, she still received mail there.

The Respondent thought that she and Naples had discussed Tykasia calling 911. She asserted that when Naples asked her to bring Tykasia in, she told Naples that she would have to discuss it with her daughter. The Respondent acknowledged that she was shown the transcript of her official Department interview during trial prep. At some point, Slater was brought into the room and the Respondent recognized her to be a supervisor. The Respondent contended that the conversation with Slater was about their respective children. She claimed not to know why Slater was present. She was unsure whether she had a conversation with Slater about the interview transcripts, and could not remember talking to her about the incident with Douglas. The Respondent did not know how long she was in the room with Slater, but acknowledged that each of them separately spoke with Naples. The Respondent also spoke to Gubitosi, who reminded her that she should tell the truth.

The Respondent denied being concerned about speaking to three members of the service during trial prep. She felt that she was as cooperative "as [she] could be," elaborating that she answered all their questions truthfully. She also recalled having to refer to the interview transcript in order to answer some of the questions. The Respondent admitted that she asked

Naples why she was needed if they had the tapes and transcripts. The Respondent admitted that she could see the “relevancy” of a domestic violence victim testifying at trial.

The Respondent disputed the idea that Tykasia was a witness to the incident with Douglas. She agreed that her daughter was in the house and could hear what happened, which was why she called 911.

Upon questioning by the Court, the Respondent clarified that there were two incidents of domestic violence between her and Douglas. Both occurred in Brooklyn. On-duty Department personnel responded to both incidents, but she was only officially interviewed once, the night of the second incident. (Douglas was charged, inter alia, with failing to notify the responding officers that he and the other individual involved were Department members; the Respondent took a Command Discipline [CD] for this.)

The Respondent testified that she moved to Greene Avenue in October 2008. She changed her residence officially for the Department but could not remember if she had put an apartment number on the forms. She was full-duty in February and March of 2009, performing day tours. The Respondent’s relationship with Douglas at that time was non-romantic, after eight or nine years as a couple. He would only come to her residence for visitation with their children. She had primary physical custody. Douglas paid child support at the time, so she was worried about him losing his job.

FINDINGS AND ANALYSIS

Specification No. 1

The Respondent is charged with giving misleading or false answers during the Department trial of Police Officer Kenneth Douglas. Douglas was the father of the Respondent’s

younger children and was accused, inter alia, of assaulting the Respondent in November 2007. The Respondent's daughter, Tykasia Daniels, was also a witness to that incident and made a 911 call. The police officers that responded to the 911 call were notified that Department members were involved. An official Department interview of the Respondent was conducted the night of the incident, and Tykasia was interviewed as well.

Pamela Naples was the Advocate assigned to Douglas's case. Naples testified at the Respondent's trial that on February 10, 2009, she brought the Respondent in to the Department Advocate's Office to prepare for the Douglas trial. This is known among litigators as "trial prep" or "witness prep." Naples testified that the Respondent was uncooperative during prep. Naples said that the Respondent claimed not to remember the incident, even when she was presented with the transcript of her official Department interview. The Respondent asked Naples why her testimony was necessary if Naples had her interview.

Naples testified that she brought in her supervisor, DAO special counsel Nancy Slater, to talk to the Respondent. Slater, at the Respondent's trial, also characterized her as uncooperative.

Naples testified that she asked the Respondent during the prep session if she would be willing to bring in Tykasia to testify against Douglas. Naples said that the Respondent refused to do so.

At Douglas's trial, Naples moved for the introduction into evidence of Tykasia's interview. Counsel for Douglas objected, stating that Tykasia was available. The Court did not rule immediately on Naples' motion. The Respondent testified as a Department witness, and toward the end of her testimony, Naples asked her whether she remembered "anyone" asking her to bring Tykasia in to testify. The Respondent answered, "I don't think so, no."

At her own trial, the Respondent admitted that she was reluctant to testify against Douglas. They were not a couple at the time of the incident or Douglas's trial, but Douglas paid child support for their three children. The Respondent had primary physical custody of the children. The Respondent, though admitting she knew her testimony as a domestic violence victim was relevant, asked Naples why she was needed if the official interview was available. The Respondent denied that Naples asked her during trial prep to bring in Tykasia, and contended that she and Tykasia had the kind of close relationship where they would have talked about such a request.

The Court certainly finds it credible that Naples would want Tykasia to testify against Douglas. Tykasia made the 911 call and when interviewed by the duty captain on the night of the incident, she said that she observed Douglas punch the Respondent in the face. Because one of the specifications against Douglas charged the crime of Assault in the Third Degree under Penal Law § 120.00 (1), the Department was required to prove physical injury impairment of physical condition or substantial pain, see Penal Law § 10.00 (9). She was the oldest child of the household, was not Douglas's daughter, and was arguably a more independent witness than her mother. Because Tykasia was a minor, it was natural that Naples, consistent with DAO practice, would have asked her mother, a member of the service, to facilitate her presence at trial. The Court credits Naples' assertion that she asked the Respondent to bring in her daughter and that the Respondent refused to do so.

The Court's decision in the Douglas trial is an official record of this tribunal and this Court will take judicial notice of it. The docket was case nos. 82032/06 & 83759/08, and the decision was signed by the Police Commissioner on October 19, 2009. He was found Guilty in both the April 2005 and November 2007 incidents, which included failure to notify the

Department about an unusual off-duty occurrence, failure to identify himself as a Department member to on-duty personnel, striking the Respondent, and endangering the welfare of a child. The Court found Douglas Not Guilty of the Penal Law assault charge, finding that a responding officer's description of swelling to the face did not establish physical injury. The Respondent claimed at Douglas's trial that she could not remember being punched.

At Douglas's trial, the Respondent claimed not to remember being asked to produce her daughter. The Department argued that this was a false lack of memory. The Court notes that the Respondent engaged in several dubious failures to remember. This began with failing to remember the incidents during trial prep with Naples. At Douglas's trial, as noted supra, the Respondent claimed not to remember if Douglas punched her. Whether the father of three of her children punched her or not, that is not the kind of information one tends to forget. Cf. Case Nos. 85591/09, 85593/09 & 86379/10, signed Aug. 9, 2010) (officer's claims of "Not that I recall" to questions of whether he falsely told investigator that he was at a doctor's appointment, and giving fake phone number for that office, "ring extremely hollow"). Finally, although Slater was sent in to speak to the Respondent specifically to impress upon her the importance of testifying truthfully, all the Respondent could recall was that they talked about their children. The Court finds all of this unlikely and concludes that the Respondent remembered what she wanted to remember. Her claim at Douglas's trial that she did not remember anyone asking her to bring Tykasia in to testify was untrue and therefore was "misleading," as the specification charges.

The sole remaining question was posed by the Respondent's counsel on summation. It was asserted that the specification was written erroneously with regard to the facts put forth by the Department at trial. Specification 1 alleged that the Respondent falsely testified at the

Douglas trial that she did not remember stating during prep that she was refusing to bring in Tykasia for that trial. The Douglas transcript, produced at the Respondent's trial, read that she denied recalling *being asked* to produce her daughter in to testify.

The Court rejects the Respondent's argument. In an administrative proceeding, it is required only that the charges be reasonably specific, in light of the relevant circumstances, to apprise the accused of the charges and to prepare an adequate defense. Matter of Block v. Ambach, 73 N.Y.2d 323, 333 (1989). That is what occurred here. The Respondent knew that she was being accused of lying at Douglas's trial about whether she remembered the Advocate speaking to her about Tykasia's upcoming appearance. That was clear from discovery in the case, when materials like the Douglas transcript would have been turned over. Cf. Richard Downes v. Klein, 2007 N.Y. Misc. Lexis 3845 (Sup. Ct., N.Y. County, Apr. 16, 2007) ("From the exchange of materials prior to the hearing, it was clear what the issues were."). Notably, the Respondent did not allege surprise, inadequate notice, or prejudice. See Matter of Murphy v. County of Ulster, 218 A.D.2d 832, 833 (3d Dept. 1995). In fact, it was the Respondent that held back on concerns about the charge until summation.

The gravamen of the specification was that the Respondent "provided misleading answers" at Douglas's trial about what Naples had asked her to do concerning Tykasia's appearance. The misleading answer alleged in the specification was that the Respondent did not remember that Naples asked and she refused. In fact, it was proven at the Respondent's trial that she "provided misleading answers" about not remembering that Naples asked. The point is that the Respondent gave misleading responses. This finding is not materially different from the conduct alleged in the charge. See Matter of Park v. New York State Dept. of Health, 222 A.D.2d 959 (3d Dept. 1995) (where medical review board disciplined ophthalmologist for

improperly treating condition by failing to refer patient to specialist or doing a culture, the point was not whether patient actually had that condition, but the adequacy of the doctor's treatment, given what he could tell about patient's condition at the time); Matter of Langhorne v. Jackson, 213 A.D.2d 909, 910 (3d Dept. 1995) (employee was charged with physically attacking supervisor by hitting and choking, and hearing officer found that there was an assault but nature and degree of it was not as important; this determination was within the ambit of the reasonably specific charge that employee physically attacked supervisor). Accordingly, the Court finds the Respondent Guilty of the first specification. See also Matter of Electchester Hous. Project, Inc. v. Rosa, 225 A.D.2d 772, 773 (2d Dept. 1996) (human rights agency validly found that employer retaliated against employee for filing age discrimination complaint, even though complaint did not allege retaliation; under relevant statute, retaliation is a form of discrimination, so it was within the ambit of the discrimination complaint).

Specification No. 2

The Respondent, having pleaded Guilty to the second specification, is found Guilty.

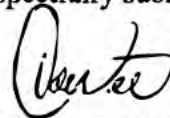
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 1, 1998. Information from her personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of providing misleading answers during the Department trial of her daughter's father, also a police officer. The Respondent also pleaded Guilty to failing to update her Department of Motor Vehicles information.

The Advocate recommended a penalty of 10 to 15 vacation days.¹ The Court recommends a penalty of 15 vacation days. See *Case No. 84347/08*, signed Mar. 31, 2010 (15 days for causing false entries to be made in Department records; after several failed attempts to locate the actual Police Accident Report, officer instead completed a new report, writing that one of the drivers had left the scene of the accident, which was false).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials



¹ The Advocate's original recommendation was 12 vacation days, but the Court asked for a round number, either 10 or 15. The Court recalls that the Advocate provided this, but the transcript does not reflect what she actually said.

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TRINA DANIELS
TAX REGISTRY NO. 921260
DISCIPLINARY CASE NO. 85667/09

The Respondent was rated 4.0 "Highly Competent" on her last three annual performance evaluations. She has been awarded three medals for Excellent Police Duty.

[REDACTED]
[REDACTED],
[REDACTED]. In
December 2007, she was placed on Level II Discipline Monitoring.

In 2006, the Respondent was served with charges and specifications for failing to request the response of a patrol supervisor to the scene of an unusual police occurrence. The charge was ultimately dismissed, and instead the Respondent received a command discipline for her misconduct. The date listed in the specification, as reflected on her Central Personnel Index report, is April 9, 2005. This was the same date as alleged in the specifications against Douglas concerning the first incident.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials