



POLICE DEPARTMENT

-----X  
 In the Matter of the Disciplinary Proceedings :  
 against : FINAL  
 Detective Joseph Franco : ORDER  
 Tax Registry No. 925313 : OF  
 Military and Extended Leave Desk : DISMISSAL  
 -----X

Detective Joseph Franco, Tax Registry No. 925313 [REDACTED]

[REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2019 20565 as set forth on form P.D. 468-121, dated June 5, 2019, and amended November 20, 2019, and after a review of the entire record, is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Joseph Franco from the Police Service of the City of New York.

DERMOT F. SHEA  
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

March 23, 2020

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2019-20565
Detective Joseph Franco	:	
Tax Registry No. 925313	:	
Military and Extended Leave Desk	:	

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At: Police Headquarters  
 One Police Plaza  
 New York, NY 10038

Before: Honorable Jeff S. Adler  
 Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.  
 Department Advocate's Office  
 One Police Plaza  
 New York, NY 10038

For the Respondent: Howard Tanner, Esq.  
 Tanner & Ortega, LLP  
 299 Broadway, Suite 1700  
 New York, NY 10007

To:  
 HONORABLE DERMOT F. SHEA  
 POLICE COMMISSIONER  
 ONE POLICE PLAZA  
 NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about April 10, 2018, while on duty, caused false entries to be made in Department records, to wit: said Detective indicated in a New York City Police Department Observation DD5 Report that he observed two (2) individuals identities known to the Department engage in a narcotics related transaction when that was not in fact true.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS
2. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about April 10, 2018, while on duty, caused false entries to be made in Department records, to wit: said Detective provided a member of service known to the Department with false information which led to the creation of two (2) New York City Police Department Arrest Online Omniform Reports for the arrests of two individuals known to the Department to be filed with the Department containing false information.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS
3. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about April 11, 2018, while on duty, caused false entries to be made in the Criminal Court of New York County, to wit: said Detective provided a member of service known to the Department with false information which led to two (2) Criminal Court Affidavits containing false information to be filed with the Court of New York County.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS
4. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about April 16, 2018 and May 30, 2018, falsely testified before the Grand Jury in New York County that he observed two (2) individuals identities known to the Department engage in a narcotics related transaction, when that was not in fact true.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS
5. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about May 17, 2018, while on duty, caused false entries to be made in Department records, to wit: said Detective indicated in a New York City Police Department Observation DD5 Report that at approximately 1540 hours, he observed three (3) individuals, identities known to the Department engage in a narcotics related transaction, when that was not in fact true.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS
6. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about May 17, 2018, while on duty, caused false entries to be made in Department records, to wit: said Detective indicated in a New York City Police Department Observation DD5 Report that at approximately 1605 hours, he observed three (3) individuals identities known to the Department engage in a narcotics related transaction, when that was not in fact true.  
P.G. 203-08, Page 1, Paragraph 1                      FALSE STATEMENTS

7. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about May 17, 2018, while on duty, caused false entries to be made in Department records, to wit: said Detective provided a member of service known to the Department with false information which led to the creation of four (4) New York City Police Department Arrest Online Omniform Reports for the arrests of four (4) individuals identities known to the Department to be filed with the Department containing false information.  
P.G. 203-08, Page 1, Paragraph 1 FALSE STATEMENTS

8. Said Detective Joseph Franco, while assigned to Narcotics Borough Manhattan South, on or about May 17, 2018, while on duty, caused false entries to be made in the Criminal Court of the County of New York, to wit: said Detective provided a member of service known to the Department with false information which led to three (3) Criminal Court Affidavits containing false information to be filed with the Court of New York County. *(As amended)*  
P.G. 203-08, Page 1, Paragraph 1 FALSE STATEMENTS

### REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 2 and 3, 2019, and February 3, 2020. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective Kyle Crevatas and Sergeant Alvin Valdez as witnesses, and introduced video footage of the two incidents. Respondent called Lieutenant Washington Zurita and Detectives Logan Payano, Jawuan Hubbard, and Edwin Martinez as witnesses. 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. Having reviewed all of the evidence in this matter, I find Respondent guilty of all charges and recommend that he be dismissed from the Department.

### ANALYSIS

This case involves multiple allegations of false statements made by Respondent in connection with three narcotics-related transactions that he claims to have witnessed on two separate dates in New York County. The information provided by Respondent led to the arrest

of several individuals. It is alleged that Respondent did not, in fact, witness the drug transactions. Specifically, Respondent claimed that on April 10, 2018, he observed Person A purchase narcotics from Person B inside [REDACTED], leading to the arrests of Person A and Person B. Respondent also claimed that on May 17, 2018, he witnessed two separate drug transactions inside [REDACTED], where Person C and Person D sold narcotics to Person E, and, 25 minutes later, the same two individuals sold narcotics to Person F; all four individuals were arrested. The Department offered evidence, including video footage, to establish that Respondent did not make any of these observations.

A. [REDACTED]

Detective Kyle Crevatas, who was assigned as a police officer to Manhattan South Narcotics at the time of the incidents, testified that Respondent was a member of his field team on April 10, 2018. Respondent made a radio transmission where he informed the team of a positive drug transaction, and provided descriptions of the individuals involved in the sale. Person A and Person B were arrested by Crevatas based on the information provided by Respondent.

Crevatas prepared arrest reports (Dept. Ex. 2, 3) and drafted criminal court affidavits (Dept. Ex. 4, 5), in reliance on Respondent's information, including Respondent's Observation – Ghost Report (Dept. Ex. 1). The arrest reports indicate that Respondent observed the drug sale take place in the “lobby of the building.” According to Crevatas, he worked with Respondent on about 50 operations spanning one year, and never had reason to believe that Respondent did not witness what he claimed to have witnessed. Crevatas described Respondent as “very good at what he did” because he blended in, and was able to detect narcotics transactions. (Tr. 9-11, 15-17, 22, 46-47, 49, 63-64, 66)

Sergeant Alvin Valdez, who worked for IAB Group 54 at the time, testified that on April 30, 2018, he was assigned to investigate this matter. As part of his investigation, Valdez reviewed Respondent's two Grand Jury testimonies regarding the alleged drug sale (Dept. Ex. 14, 15) and the video surveillance footage of 45 Rutgers Street (Dept. Ex. 16A). (Tr. 77-78, 81-82, 84, 87-89, 96-99)

In his Grand Jury testimony on April 16, 2018, regarding the April 10 alleged drug transaction between Person A and Person B, Respondent testified to the following:

I saw Person A and Person B in conversation. I told the team I saw money in her hand, she was walking, so I told the team to stand by, like there may be a transaction going on and I followed them. Person B asked how many - - he asked how many, she replied two. Once I heard that conversation, I followed them. They went to [REDACTED] where she handed him the money. He left her, he separated from her for a moment, then came back to her, he handed her a couple of items by touching hands, they separated; she walked west on [REDACTED] and he came to the corner of [REDACTED] and [REDACTED] after the transaction.

(Dept. Ex. 14 at 5-6) Respondent further testified that he told his team that he observed the positive drug transaction. Detective Payano subsequently followed and arrested Person A on [REDACTED], while Respondent and two other detectives arrested Person B at the corner of [REDACTED] and [REDACTED]. Respondent walked to [REDACTED] where he observed Payano recover two Ziploc bags of crack cocaine from Person A. (Dept. Ex. 14 at 6)

In his second Grand Jury testimony on May 30, 2018, Respondent again testified that he "followed [Person A and Person B] to [REDACTED] where she handed in the money. Short time later after she handed in the money, he walked off, came back and he handed several items by touching hands." (Dept. Ex. 15 at 5-6) Upon additional questioning by the Assistant District Attorney (ADA), Respondent, under oath, gave the following answer:

ADA: Detective, a grand juror would like to know, do you know if anyone followed Person B when he walked off before coming back to

Defendant Person A?

Respondent: No, he walked like within the building, like within the lobby area, not too long, it's two elevators, two staircases on the side, and he walked around that area and came back, he went around the corner, I did not get to see him, but he came back, that's when the transaction happened.

(Dept. Ex. 15 at 6-7)

Video surveillance footage in connection with the April 10 incident at [REDACTED] was introduced as Dept. Ex. 16A. In that footage, at 00:01, Person B and Person A appear together walking up the outdoor steps of [REDACTED], and entering the front door of the building. At 00:10, an unidentified individual, whose facial features were unclear due to the quality of the video footage, enters the building behind them. At 00:17, Person B and Person A walk into the lobby area of the building followed by the unidentified individual. At 00:23, Person B is captured in the bottom right corner of the footage turning towards the hallway to the right of the elevator with Person A following closely behind him. The unidentified individual, meanwhile, walks straight into the elevator, prevents the elevator door from closing with his hand, and then moves further back into the elevator when another individual pushing a stroller and two children enter. At 00:54, Person A appears in the bottom right corner of the footage leaving the right-side hallway area and re-entering the lobby toward the exit. Ten seconds later, Person B also leaves the right-side hallway and re-enters the lobby area. Person A exits the building at 01:10, shortly followed by Person B who leaves at 01:23. (Dept. Ex. 16A)

Several photographs of [REDACTED] were received in evidence as Dept. Ex. 18A-F. The images include multiple views of the building's interior lobby area, the right-side hallway that branches off from the lobby, the right-side stairwell door, and the elevator.

Respondent, who was assigned to Manhattan South Narcotics at the time of the incident, testified that at approximately 1510 hours on April 10, 2018, he was conducting a narcotics

operation in the vicinity of [REDACTED] and [REDACTED] after receiving community complaints of ongoing drug transactions taking place there. While riding his bicycle, Respondent overheard a narcotics-related conversation between a male (later determined to be Person B) and a female (later determined to be Person A near the corner of [REDACTED] and [REDACTED]). Based on his experience and familiarity with [REDACTED] as a drug-prone building, Respondent surmised that Person A and Person B were traveling to [REDACTED] to engage in a drug sale. Respondent testified that he did not follow Person A and Person B to [REDACTED], but, instead, rode ahead of them to the rear of the building in order to avoid detection. He claimed that he was able to use his bicycle to arrive at the rear entrance in approximately 10 seconds, while Person A and Person B walked slowly towards the front entrance of [REDACTED] on foot. Respondent admittedly did not observe Person A or Person B actually enter [REDACTED].<sup>1</sup> (Tr. 329-338, 376, 468-470, 491)

Respondent testified that, from his experience, drug transactions frequently took place in the stairwells of [REDACTED] due to the lack of cameras. He proceeded to enter the building from the opened rear door and walk up Stairwell B from the basement level to the lobby level. When he did not find either individual in Stairwell B, Respondent walked up to the second level, exited Stairwell B, and crossed over to Stairwell A. Respondent testified that he peered through the glass window of the second level door to Stairwell A, looked down, and spotted Person A and Person B inside Stairwell A near the door to the lobby level. Respondent claimed that he observed Person A hand Person B currency. Person B proceeded to open the stairwell door to look around the lobby, and then separated from Person A to walk up the staircase. Respondent removed his head from the window to remain undetected, and briefly lost sight of the

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<sup>1</sup> Respondent provided video footage, recorded a few weeks prior to the February 3, 2020 trial date, in which he demonstrated a walkthrough of his alleged route taken on April 10, 2018 (Resp. Ex. D2).

heard Person B's footsteps as he walked up and back down the stairs. Respondent claimed that he looked into the window again, and observed Person B hand Person A several items by touching hands. Respondent then exited the building through the rear, and informed his team of the positive drug transaction over the radio. He witnessed an officer arrest Person A, and find narcotics on her person. Respondent maintained that the information he provided for the observation ghost report, arrest reports, and criminal court affidavits regarding the incident were accurate.

(Tr. 333, 338-353, 382, 385-388, 391-393, 466, 470-477)

Respondent further testified at trial that in his official Department interview on May 2, 2019, he could not recall any details regarding the alleged drug transaction at [REDACTED]. He also could not recall if he was the unidentified individual who entered the building immediately after Person A and Person B and got on the elevator. Respondent stated in his interview that it could be him in the video (Dept. Ex. 16A) as he admittedly wore similar clothing. In his trial testimony, however, Respondent definitively denied that he was the unidentified individual who got on the elevator. (Tr. 379-380, 384, 481, 483)

B. [REDACTED]

Detective Crevatas also testified regarding the events of May 17, 2018. On that date, Respondent made radio transmissions where he informed the team of two separate observation sales, and provided descriptions of the individuals involved. Person E, Person F, Person C, and Person D were arrested by Crevatas based on the information provided by Respondent. Crevatas prepared arrest reports (Dept. Ex. 7-10) and drafted criminal court affidavits (Dept. Ex. 11-13), in reliance on Respondent's information, including Respondent's Observation – Ghost Report (Dept. Ex. 6). (Tr. 25-26, 29-42, 52)

Sergeant Valdez testified that he investigated the May 17, 2018 incident. As part of his investigation, Valdez reviewed the video surveillance footage in connection with the two drug transactions that allegedly occurred at [REDACTED] (Dept. Ex. 16B). (Tr. 81-82, 84, 105)

In the footage regarding the first alleged sale, Respondent can be seen riding a bicycle around the courtyard area near the entrance to [REDACTED] from 00:23 to 00:34. At 01:05, Person E turns from [REDACTED] into the courtyard area and walks to the front entrance, where he paces back and forth while waiting to gain access into the building. Respondent continues to circle on his bicycle near the sidewalk on [REDACTED]. At 04:35, Person E walks into the building. After briefly entering and exiting the elevator, Person E walks up the lobby stairs that are situated directly across from the building's front door. At 05:25, Person E walks down the stairs and opens the front door to allow two males and one female to enter the building. Person E and the two males proceed up the stairway. At 08:17, Respondent can be seen riding his bicycle on the pathway towards [REDACTED] and passing the building's entrance. Person E exits the building at 08:47 and walks to the left, with Respondent riding his bicycle behind Person E towards [REDACTED]. (Dept. Ex. 16B)

A separate video containing additional footage for that time period also was introduced into evidence. (Resp. Ex. B) In the first part of that footage, which shows [REDACTED] looking north, Respondent is on the sidewalk circling the area on his bicycle. At 02:05, Person E turns left from [REDACTED] onto the pathway, and walks toward the entrance [REDACTED]. Respondent briefly stops his bicycle, and appears to observe Person E walking to the entrance; he then resumes circling with occasional pauses before the recording ends at 04:31. The second part of the footage picks up a few minutes later, with Respondent

again circling the sidewalk area near [REDACTED]. At about 00:14, Respondent travels down the pathway towards the entrance [REDACTED]. At 00:58, Person E can be seen walking up the pathway towards [REDACTED], with Respondent following closely behind on his bicycle. Person E veers towards the left, while Respondent continues riding straight to [REDACTED], before turning left and following in Person E's direction. (Resp. Ex. B)

In the Department's video regarding the second alleged sale, Person F walks to the front entrance [REDACTED] at 09:30, and waits outside while talking on a cell phone. Respondent is riding his bicycle, circling the sidewalk area near [REDACTED]. At 11:02, Person C walks down the stairway to the lobby area, opens the door for Person F to enter the building, and they proceed upstairs. At 11:44, Respondent appears on his bicycle, circling the sidewalk near [REDACTED]. He stops and remains stationary on the sidewalk near [REDACTED] at 11:58 until Person F exits the building at 12:44, at which point Respondent begins riding to the left on [REDACTED]. After exiting the building, Person F walks to the right, and about 20 seconds later Respondent rides down the pathway past the front entrance of the building in the same direction that Person F is walking. (Dept. Ex. 16B)

Several photographs showing the front [REDACTED], and the surrounding area, were introduced into evidence (Dept. Ex. 17, Resp. Ex. A, C, E). A [REDACTED] map showing an aerial view of the area was received in evidence as well (Resp. Ex. F). Respondent marked his route on this map, indicating where he had cut through on the pathway.

Respondent testified that on May 17, 2018, he observed two separate narcotics transactions at [REDACTED]. After receiving several complaints of narcotics sales occurring at [REDACTED], Respondent and his field team conducted a narcotics

operation at that location. Respondent was riding his bicycle on [REDACTED] when he witnessed a male (later determined to be Person E) approach the building's front door.

Person E was standing outside of the entrance and looking up at the windows while he waited to gain access to the building. (Tr. 396-398)

Respondent testified that he rode his bicycle into the courtyard area, down the pedestrian pathway toward [REDACTED], just past the front entrance of the building. He stated that he stopped and positioned himself on the pathway, approximately 45 feet from the front entrance of the building, where he observed Person E interact with two individuals (later determined to be Person C and Person D) through the glass doorway. Respondent claimed that, from his vantage point, he was able to look through the windows of the front door and see the three individuals standing next to one another in the building's hallway, which was up four steps and three-to-five-feet down the hall. Respondent testified that he witnessed Person E exchange currency for narcotics, and proceeded to inform his team over the radio that he observed a positive transaction and that Person E was travelling south on [REDACTED]. Person E was subsequently arrested, and narcotics were recovered from his person. (Tr. 416-420, 423-424, 498-500)

Approximately 20 minutes after this arrest, Respondent resumed his surveillance [REDACTED]. While riding his bicycle, Respondent observed a female (later determined to be Person F) waiting outside of the building's entrance for a brief time until she gained access when Person C opened the door. Respondent claimed that he rode his bicycle west on the [REDACTED] sidewalk, turned onto [REDACTED] toward [REDACTED], and turned onto the pathway that cuts through the [REDACTED] and [REDACTED] buildings, which positioned him approximately 45 feet away from the building's front door, the same vantage point from which

he claimed to have seen the sale to Person E.<sup>2</sup> Respondent testified that he was looking up into the windows above the building's front door, and observed Person F with two individuals (later determined to be Person C and Person D) engage in a drug transaction by the window on the [REDACTED] floor of the building. Respondent claimed that he had a clear view of the faces of the individuals involved in the transaction. Respondent relayed the information over the radio, and provided the direction that Person F was travelling. He witnessed another officer apprehend Person F, and find narcotics on her person. Respondent maintained that the information he provided for the observation ghost report, arrest reports, and criminal court affidavits regarding both of the alleged drug transactions were accurate. (Tr. 424-426, 428, 430-434, 450, 455-458, 501-502, 506, 511)

Respondent also testified at trial that in his official Department interview on May 2, 2019, he could not recall any details regarding the two alleged drug transactions at [REDACTED] [REDACTED] (Tr. 393-394, 507)

### C. Character Witnesses

A number of character witnesses testified on Respondent's behalf. Lieutenant Washington Zurita testified that Respondent was under his supervision for over one year. He described Respondent as "one of the best detectives, best officers" because "he had an eye in seeing sets, seeing locations, who was out there dealing, he had like a sixth sense in regards to that." (Tr. 243, 245) Detective Logan Payano testified that he worked with Respondent at Manhattan South Narcotics for two-and-a-half years, and was present for the April 10, 2018, incident where he arrested Person A. Respondent was "incredibly dedicated to his work," adept

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<sup>2</sup> Respondent provided video footage, recorded a few weeks prior to the February 3, 2020 trial date, in which he demonstrated a walkthrough of his alleged route taken on May 17, 2018, in connection with the incident (Resp. Ex. D1).

blending in at a location. (Tr. 252-53, 259) Detective Jawuan Hubbard testified that he worked with Respondent for one year at Manhattan South Narcotics. He described Respondent as “the best cop [he] ever worked with.” He noted that with his ability “to dissect, diagnose drug-prone locations, he was more effective at getting into areas that our undercovers couldn’t get into.” (Tr. 261-62, 264) Detective Edwin Martinez testified that he and Respondent grew up in the same neighborhood, and he worked as Respondent’s undercover partner from 2014 to 2016 in [REDACTED] [REDACTED] where they were involved in hundreds of operations together. He described Respondent as a “good undercover” and “great investigator” with an ability to blend in while working as an undercover or ghost. (Tr. 305-309)

The charges against Respondent will now be considered separately for each of the two locations.

[REDACTED]

Specifications 1-4 charge Respondent with making false statements, in which he claimed that he witnessed a drug transaction between Person B and Person A on April 10, 2018. The video footage, which includes the lobby area and the front entrance of [REDACTED], shows no sign of Respondent being in position to witness such a sale. If Respondent was the individual who followed Person B and Person A into the building and entered the elevator, which he denied, then he would not have been capable of seeing a sale from that vantage point either.

Faced with this video evidence at trial, Respondent offered an explanation for how he did, in fact, witness the drug sale. Specifically, he claimed that, after overhearing a drug-related conversation between Person A and Person B on [REDACTED], Respondent anticipated, from his experience and familiarity with the area, that the two individuals were intending to conduct a drug transaction inside a stairwell at [REDACTED]. Respondent, who was on a bicycle, rode

ahead to the rear basement entrance of the building, then walked up Stairwell B to the lobby level. When he did not observe Person A and Person B in Stairwell B, Respondent walked up to the second floor and crossed over to the door of Stairwell A. Looking through the window of that door, Respondent testified that he observed a drug sale take place between Person A and Person B inside the stairwell one floor down.

This testimony, however, is in stark contrast to the initial accounts provided by Respondent regarding his observations. The arrest reports for Person A and Person B, which Crevatas testified he prepared based on information provided by Respondent, both indicate that the sale took place in the lobby, with no mention of a stairwell. In neither appearance before the Grand Jury does Respondent mention that the sale took place inside a stairwell. Counsel for Respondent argues that such omissions are not probative, since Respondent was asked only general questions. However, on page 7 of his May 30, 2018 Grand Jury testimony (Dept. Ex. 15), Respondent provides a more detailed answer as to where he claims he saw the exchange take place: he describes seeing Person B leave the lobby area, walk around the corner, then return to Person A and complete the transaction. This account is consistent with the arrest report, which indicates that the sale took place in the lobby, but at odds with Respondent's trial testimony stating that the transaction occurred in the stairwell.

Additionally, Respondent's trial testimony is inconsistent with his Grand Jury testimony in another significant way. In each of his appearances before the Grand Jury, Respondent asserted that he followed Person A and Person B to [REDACTED] after he overheard them discussing a drug transaction. However, at trial Respondent claimed that he overheard Person A and Person B discussing a drug sale, and proceeded to ride ahead of them to [REDACTED] because he anticipated that this was the location where the drug transaction was to take place.

After carefully considering the totality of the evidence, including the video footage and the discrepancies in Respondent's accounts, I conclude that Respondent did not actually see a drug transaction occur. Respondent initially provided a simple version of events, claiming that he followed the individuals to the building and observed the transaction take place in the lobby. However, when faced with video footage showing that both individuals walked off to the right-side hallway, that no transaction occurred in the lobby, and that Respondent, himself, was not anywhere in the vicinity of the lobby, Respondent needed to modify his story for trial. He moved the location of the sale to the stairwell, which enabled him to claim he witnessed the exchange from the floor above. However, Respondent could not continue to maintain that he followed Person A and Person B to the building because that would not have provided him with enough time to get in position to view the sale. So Respondent again modified his story, claiming that he anticipated the location of the sale and rode to the building ahead of Person A and Person B in order to take up his position on the second floor.

This tribunal is mindful that drugs were recovered from Person A and Person B, which is indicative that a sale may, in fact, have taken place. However, even if a sale did occur, that does not mean that Respondent actually witnessed it. From his extensive experience in dealing with narcotics transactions, as repeatedly emphasized by him and his colleagues, Respondent might very well have seen enough to correctly predict that Person A and Person B were likely to engage in a drug sale. However, even if such an exchange did take place, the credible evidence has established that Respondent, himself, did not witness it. As such, I find that his statements about what he observed, on the day of the incident, at the two Grand Juries, and in his trial testimony, were all deliberately fabricated in order to justify the arrests of these two individuals. With that in mind, we turn to the first four specifications.

Specification 1 charges Respondent with making false entries in his Observation - Ghost Report (Dept. Ex. 1) regarding his observation of a narcotics-related transaction on April 10, 2018. In that report, Respondent states that he observed Person A and Person B currency in exchange for items later determined to be crack cocaine. As discussed above, the credible evidence has established that Respondent did not actually witness such an exchange.

Accordingly, I find Respondent guilty of Specification 1.

Specifications 2 and 3 charge Respondent with providing Crevatas, the arresting officer, with false information regarding his observation of the alleged drug sale at [REDACTED]; that information led to the creation of two arrest reports for Person B and Person A, which were filed with the Department (Dept. Ex. 2 and 3), and two criminal court affidavits containing false information, which were filed with the Court of New York County (Dept. Ex. 4 and 5). Again, as discussed above, the credible evidence established that Respondent did not actually witness a narcotics sale between Person A and Person B. As such, the information Respondent provided to Crevatas, which the arresting officer relied upon in his preparation of the arrest reports and criminal court affidavits, was false, and I find Respondent guilty of Specifications 2 and 3.

Specification 4 charges Respondent with falsely testifying before the Grand Jury in New York County on April 16, 2018, and May 30, 2018. In each of his Grand Jury appearances, Respondent testified that he observed a narcotics transaction between Person A and Person B. He provided specific testimony claiming to have followed Person A and Person B to 45 Rutgers Street, where he witnessed a hand-to-hand exchange between the two individuals in the lobby. However, as discussed above, the credible evidence established that Respondent did not actually witness such an exchange. As such, Respondent's testimony before each Grand Jury was false, and I find him guilty of Specification 4.

[REDACTED]

Specifications 5-8 charge Respondent with making false statements, in which he claimed that he witnessed two drug transactions on May 17, 2018. As with the incident at [REDACTED], the video footage, which includes the immediate area outside the building's front entrance as well as the interior lobby area, shows no sign of Respondent being in position to witness either of the two alleged drugs sales that occurred inside [REDACTED].

Faced with this video evidence at trial, Respondent offered an explanation for how he was, in fact, in position to witness the two transactions. Specifically, he claimed that he positioned himself on his bicycle diagonal to the building's entrance, approximately 45 feet away. From that vantage point, which is outside of the area captured by the Department's video footage, Respondent was able to observe both of the drug sales. For the first alleged sale, he claimed that he looked through the windows of the front door and saw Person E, Person C and Person D standing next to one another in the building's hallway, which was up four steps and three-to-five-feet down the hall. Respondent testified that he could see Person E exchange currency for narcotics. Approximately 20 minutes later, Respondent rode his bicycle around the corner and cut through the pathway between buildings to return back to the same location. From there, he claimed to observe Person F, Person C, and Person D engage in a drug transaction by the window [REDACTED] of the building. Respondent claimed that he had a clear view of the faces of the individuals involved in the transaction.

However, there is video evidence (Dept. Ex. 16B) that contradicts Respondent's testimony regarding the alleged sale involving Person F. Specifically, a careful viewing of the top-right portion of the video shows that during most of the time period that Person F was in the building allegedly taking part in a drug transaction, Respondent appears to be riding his bicycle

on the sidewalk on [REDACTED]. Just seconds after Person F enters the building, Respondent can be seen either circling or stationary on his bicycle on the [REDACTED] sidewalk, where he remains until Person F exits the building. From this vantage point, Respondent was not in position to make the observations he claims to have made.

This tribunal is mindful that this particular video footage does not provide a clear view of Respondent's face. However, the footage shows him riding his bicycle on [REDACTED] in precisely the same way he can be seen riding in the clearer footage in evidence. Specifically, he is on the sidewalk, near the pathway leading into the courtyard, riding in small circles. He occasionally comes to a rest for short intervals, before starting up again. Indeed, at the 13:20 mark of the footage, shortly after Person F exits the building, Respondent can clearly be seen coming from the same location on [REDACTED], riding down the pathway toward the entrance of the building. From the totality of the credible evidence, this court concludes that Respondent is the person riding the bicycle in the video; as such, his claim that he was on the pathway, 45 feet from the front door of [REDACTED] at the time of the sale, was deliberately false.

In light of the compelling evidence refuting Respondent's account, I do not credit his testimony that he maneuvered his bicycle into position to witness, through a door window and an upstairs window, two drug sales at [REDACTED]. Rather, Respondent concocted a story that would allow him to claim that he observed two drug sales take place, when in fact he did not witness either sale.

Again, the fact that drugs were recovered from the alleged participants in the sales does not mean that Respondent actually observed the sales themselves. As noted above, from his extensive experience in dealing with narcotics transactions, Respondent might very well have seen enough to correctly predict that Person E and Person F were going to engage in drug buys.

However, even if such exchanges did take place, the credible evidence has established that Respondent, himself, did not witness them. As such, I find that his account about what he observed was false. With that in mind, we turn to the remaining four specifications.

Specifications 5 and 6 charge Respondent with making false entries in his NYPD Observation - Ghost DD5 Report (Dept. Ex. 6) regarding his observation of the two narcotics-related transactions on May 17, 2018. In that report, Respondent states that he observed Person E partake in a hand-to-hand exchange with Person C and Person D, and, 25 minutes later, he observed Person F in a hand-to-hand sale with the same two sellers. As discussed above, the credible evidence has established that Respondent did not actually witness either alleged drug sale. Accordingly, I find him guilty of Specifications 5 and 6.

Specifications 7 and 8 charge Respondent with providing Crevatas, the arresting officer, with false information regarding his observations of the two alleged drug sales at [REDACTED]; that information led to the creation of arrest reports for Person E, Person F, Person C, and Person D, which were filed with the Department (Dept. Ex. 7-10), as well as three criminal court affidavits containing false information, which were filed with the Court of New York County (Dept. Ex. 11-13). Again, as discussed above, the credible evidence established that Respondent did not actually witness narcotics sales involving the four individuals who were arrested. As such, the information Respondent provided to Crevatas, which the arresting officer relied upon to prepare and file the four arrest reports and three criminal court affidavits, was false, and I find Respondent guilty of Specifications 7 and 8.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to

the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

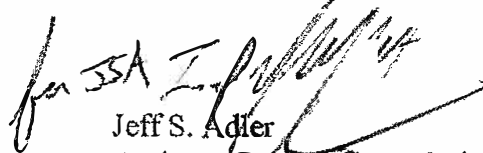
Respondent has been found guilty of all eight specifications. The Advocate asks that Respondent be dismissed from the Department. In support of that recommendation, the Advocate cites *Disciplinary Case Nos. 2010-2753 & 2010-3188* (Sept. 21, 2015) (15-year detective with no disciplinary record dismissed from the Department for lying about the sale of drugs and falsifying Department paperwork; and *Disciplinary Case No. 2012-8723* (Dec. 4, 2014) (14-year detective with three prior adjudications dismissed from the Department for falsely stating on a criminal court affidavit, arrest report, and before the Grand Jury, that he observed a perpetrator in possession of a controlled substance).

Section 203-08 of the Patrol Guide states that “the intentional making of a false statement is prohibited, and will be subject to disciplinary action, up to and including dismissal. Intentionally making a false official statement regarding a material matter will result in dismissal from the Department, absent exceptional circumstances.” Here, Respondent falsely claimed that he observed three separate drug sales, none of which he actually witnessed. The information he provided led directly to the arrests of multiple individuals. Numerous official police reports and criminal court affidavits were generated based on Respondent’s false narrative, and Respondent repeated his fabrications, under oath, during two separate Grand Jury appearances. Respondent’s actions are wholly inconsistent with the values and standards that the Department demands of its officers.

This tribunal is mindful that several members of service testified as to Respondent’s hard work and dedication to the Department. Nevertheless, Respondent egregiously and irrevocably violated the oath he swore to uphold, and separation is warranted. Taking into account the

totality of the circumstances and issues in this case, I recommend that Respondent be  
DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

APR 21 2020

DERMOT SHEA  
POLICE COMMISSIONER