

CHAIN

Memorandum for: Deputy Commissioner, Trials

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on October 27, 2011 and December 23, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 2010-2951

1. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: when on-duty Yonkers Police Officer Daniel Barahona put his arm up and told Detective Marrero that she could not walk in the direction of an ongoing police incident, Detective Marrero slapped Police Officer Barahona and stated, in sum and, substance: "You can't touch me, I'm a girl and I'm a cop" (As amended)

P.G. 203-10, Page 1, Paragraph 5

2. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, while off-duty, on or about October 10, 2010, within the confines of Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: refused to properly identify herself to an on-duty Yonkers Police Officer.

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

3. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, acted discourteously to Yonkers Central Booking Lieutenant Thomas Ward, to wit: Detective Marrero refused to identify herself to Lieutenant Ward or tell him where she worked. (As amended)

P.G. 203-10, Page 1, Paragraph 5

4. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, while off-duty on or about October 10, 2010, and in Yonkers, New York, acted discourteously, to wit: when on-duty Yonkers Police Officer Daniel Barahona requested Detective Marrero's identification, Detective Marrero responded, in sum and substance, "I told you already, I don't fucking have it on me" (As amended)

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

PUBLIC CONTACT – GENERAL

5. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, acted discourteous, to wit: when on-duty Yonkers police officers warned Detective Marrero to leave the area of an ongoing police incident or be arrested Detective Marrero responded, in sum and substance, "Arrested? And what the fuck are you going to arrest me for?" (As amended)

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

PUBLIC CONTACT – GENERAL

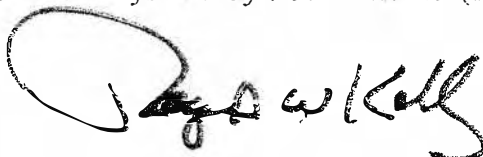
6. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off duty and in Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: Detective Marrero failed to comply with on-duty Yonkers police officers' orders to leave the scene of a police incident that did not involve her. (As amended)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated May 10, 2012, Assistant Deputy Commissioner David S. Weisel found Detective Marrero Guilty of Specification Nos. 3, 5, and 6, Not Guilty of Specification Nos. 1 and 4, and Dismissed Specification No. 2 in Disciplinary Case No. 2010-2951. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Detective Marrero's demeanor when interacting with members of the Yonkers Police Department was inexcusable. Therefore, Detective Marrero's disciplinary penalty shall be the forfeiture of thirty (30) suspension days already served and ten (10) vacation days.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

May 10, 2012

MEMORANDUM FOR: Police Commissioner

Re: Detective Sandy Marrero
Tax Registry No. 933967
Narcotics Borough Manhattan North
Disciplinary Case No. 2010-2951

The above named member of the Department appeared before the Court on October 27, 2011, and December 23, 2011, charged with the following:

1. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: when on-duty Yonkers Police Officer Daniel Barahona put his arm up and told Detective Marrero that she could not walk in the direction of an ongoing police incident, Detective Marrero slapped Police Officer Barahona and stated, in sum and, substance: "You can't touch me, I'm a girl and I'm a cop." (*As amended*)

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

2. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, while off-duty, on or about October 10, 2010, within the confines of Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: refused to properly identify herself to an on-duty Yonkers Police Officer.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGUALTIONS [sic]

3. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off duty and in Yonkers, New York, acted discourteous [sic] to Yonkers Central Booking Lieutenant Thomas Ward, to wit: Detective Marrero refused to identify herself to Lieutenant Ward or tell him where she worked. (*As amended*)

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

4. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, while off-duty on or about October 10, 2010, while in Yonkers, New York, acted discourteous [sic], to wit: when on-duty Yonkers Police Officer Daniel Barahona requested Detective Marrero's identification, Detective Marrero [sic] responded, in sum and substance, "I told you already, I don't fucking have it on me." (*As amended*)

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

5. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, acted discourteous, to wit: when on duty Yonkers police officers warned Detective Marrero to leave the area of an ongoing police incident or be arrested Detective Marrero responded, in sum and substance, "Arrested? And what the fuck are you going to arrest me for?" (*As amended*)

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

6. Said Detective Sandy Marrero, assigned to Narcotics Borough Manhattan North, on or about October 10, 2010, while off-duty and in Yonkers, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Detective Marrero failed to comply with on-duty Yonkers police officers' orders to leave the scene of a police incident that did not involve her. (*As amended*)

P.G. 203 10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED [sic] CONDUCT

The Department was represented by Scott Rosenberg, Esq., Department Advocate's Office. Respondent was represented by Peter Brill, Esq., Karasyk & Moschella LLP.

Respondent, through her counsel, entered a plea of Not Guilty to Specification Nos. 1 and 3-6. Specification No. 2 was dismissed by the Department before trial. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 3, 5 and 6. She is found Not Guilty of Specification Nos. 1 and 4. Specification No. 2 is dismissed.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Yonkers Police Officer Daniel Barahona, Yonkers Lieutenant Thomas Ward, and Sergeant Michael Dunn.

Yonkers Police Officer Daniel Barahona

Barahona had been a police officer with the Yonkers Police Department (YPD) since January 2004. Prior to that, he was a police officer with the New York City Police Department (NYPD) for approximately four years.

On October 10, 2010, Barahona was working a midnight tour and was assigned to patrol. He responded to the corner of South Broadway and Highland Avenue in Yonkers because there was a dispute where fellow officers were calling for help.

At the scene, Barahona observed a crowd of over two dozen people in an altercation with about a dozen police officers. He saw officers running to the assistance of other officers. Barahona himself assisted in about three or four arrests.

Barahona testified that after the officers dispersed the initial crowd, they began dispersing a second crowd southward on Broadway. This second crowd was lingering around on the sidewalk and the street.

Barahona explained that as he was moving south, he saw Respondent halfway down the block, between him and a restaurant called Panchito's. Respondent was walking toward him. Barahona extended his arm out and put it in her path to prevent her from going any further like he was doing to everybody else.

Barahona stated that Respondent was five to six feet away from him when he first extended his arm. She kept walking. Barahona was not sure if Respondent saw his arm, but he did make contact with her stomach. He made contact with Respondent's stomach because she tried to walk past him.

After Respondent made contact with his arm, Barahona informed her that she could not proceed in that direction and she was to turn around and walk away. Barahona said that Respondent told him she wanted to see who was being arrested.

Barahona explained that he told Respondent again that she could not go that way, and had to turn around and walk away. Respondent said to him, "You can't touch me. I'm a cop and I'm a girl."

Barahona testified that he went back and forth with Respondent on whether she could go forward, but she eventually turned around and walked away.

Less than a minute later, Barahona said, Respondent returned and began speaking with Yonkers Police Officer Matthew Miller, who was an arm's length away from him. Barahona heard Respondent say to Miller that she wanted to get by them, but Miller told Respondent that she could not go by. Barahona "interrupted" and admonished Respondent that he had already told her she could not go that way and had to turn around and walk away. Respondent did not walk away, and said to Barahona, "I'm not talking to you." She did this while putting her hand up to his face (but not touching it) and saying she was only going to talk to Miller.

Barahona said that he advised Miller to ask Respondent for her identification (ID) card because she was saying was a cop. Respondent told Miller that she did not have her ID card. When Barahona asked her where she worked, she told him she was not talking to him. This "went back and forth." Eventually, Barahona told Respondent, "[L]isten, you have no ID card,

you have nothing. You are not giving me your tax number, your command, I have no idea who you are. You are as good as a civilian. Turn around and walk away. You are going to be arrested.”

Barahona testified that Respondent did not walk away and said, “What the fuck am I going to be arrested for?” Barahona grabbed Respondent by the wrist to place her under arrest. A tug of war between a “gentleman” and Barahona, however, was pulling Respondent’s other arm away from Barahona. Barahona later found out this man was Respondent’s husband. Barahona nevertheless was able to arrest Respondent. Other officers arrested Respondent’s husband, “which turned into a struggle.”

Barahona testified that he asked Respondent over ten times for identification before arresting her. She claimed she did not remember her command and tax number when asked. She was arrested for disorderly conduct because the officers needed to disperse the crowd, and his interaction with Respondent prevented that from happening. The crowd stopped on the sidewalk to see what was happening. Barahona denied cursing at Respondent.

Barahona said that after Respondent was arrested, she was transported to central booking. At central booking, Barahona stated, Respondent did not provide basic pedigree information to him at first, though eventually she did.

When Respondent saw her husband, under arrest, at central booking, she said, “No, no, no, if he’s here and I’m here, where is my daughter?” When Barahona informed her that her one-year-old daughter was with Respondent’s mother, she relaxed and became compliant.

On cross examination, Barahona stated that he did not know why the first crowd was unruly, but they had come from Panchito’s. He heard over the police radio that there was a fight

or dispute there. When he arrived at the location he saw officers attempting to make multiple arrests.

Barahona admitted that he believed the initial disturbance was with Respondent's party at the restaurant because the people in the first crowd knew her.

Barahona's observation at the scene was that Respondent was responsible for the second crowd becoming less compliant. The officers had been making progress moving people southbound, but this stopped when the officers began interacting with Respondent. The crowd started telling him and the other officers that she was a cop and to back off her.

Barahona denied that Respondent told him that her belongings were in the restaurant. Respondent told Barahona that she wanted to see who was arrested, but never gave a reason why.

Barahona agreed that he did not hear every word between Miller and Respondent. He admitted that he felt his authority was being challenged by Respondent by going to another police officer after being told to leave by Barahona.

When asked if he was "somewhat offended" by Respondent going to Miller, Barahona answered, "Not offended where my ego was hurt deeply. It's more like a child, like my daughter will ask me and if I tell her no, she will go ask mom." He agreed that it was somewhat upsetting, however.

Barahona explained that Respondent committed disorderly conduct because she cursed at a police officer, caused the crowd to fail to leave, and caused others to gather and watch.

Barahona asserted that it was not unusual for him to have a two-page, ten-point narrative for a disorderly conduct arrest (see Respondent's Exhibit [RX] A, police report). His paperwork would be just as detailed if it were for a non-police officer. The arrest was made at 0246 hours. Barahona completed the report and resumed patrol at 0800 hours.

Barahona agreed that he was at central booking and the precinct for a while during arrest processing. A duty captain with the NYPD responded to central booking.

Barahona acknowledged that Respondent, shortly after finding out her daughter was with Respondent's mother, became cooperative and gave him all the information he needed to verify her identity. He took that information and gave it to Yonkers Lieutenant Thomas Ward, who then made the notifications.

On re-direct examination, Barahona said that he was upset with Respondent, but it did not cause him to become discourteous or more hostile toward her. Barahona testified that he raised his voice at Respondent as needed, and did not treat her any more harshly because he believed she might be a police officer.

Upon questioning by the Court, Barahona said that the initial call he got for assistance would be akin to a 10-13 in NYPD parlance.

Barahona stated that the NYPD duty captain arrived closer to the time of arrest than to Barahona's completion of the report.

Yonkers Lieutenant Thomas Ward

On October 10, 2010, Ward, a lieutenant in the YPD, was working the late tour in central booking as the booking lieutenant. During the course of his tour, Ward had contact with Respondent. Ward testified that around 0300 hours, Barahona told him that he arrested a female who said she was an NYPD officer, but was refusing to give information.

Ward asked Respondent where she worked and for her identification. Respondent told Ward that she was not going to tell him. She was belligerent and uncooperative. Ward said he became frustrated with Respondent and told Barahona to put her back in the cell.

Eventually, Ward testified, Barahona informed him that Respondent identified herself to him. Barahona also informed Ward that NYPD personnel were on their way.

Ward stated that at no time when he was in contact with Respondent did she have any complaints about Barahona or any other YPD officers.

On cross examination, Ward admitted that when he first had a conversation with Respondent, she was front-cuffed. The reason Respondent was front-cuffed instead of rear-cuffed was that they believed she was a police officer. They were not a hundred percent sure though.

Ward denied that Respondent said anything about friends or family members having been arrested. Nor did she say that she was having a birthday party for her daughter at the place of occurrence.

Upon questioning by the Court, Ward stated that the NYPD duty captain arrived at central booking within two hours after Respondent was brought there.

Sergeant Michael Dunn

Dunn was assigned to the Organized Crime Control Bureau Investigations Unit. In November 2010, Dunn was assigned to an investigation of Respondent. This included interviewing Miller.

Dunn interviewed Miller in June 2011 over the phone. This was not recorded. Dunn said that it was Department policy not to record phone conversations with other police departments' personnel in order to encourage cooperation.

While interviewing Miller over the phone, Dunn asked Miller to review the police report prepared by Barahona (RX A). Dunn said Miller looked at Barahona's report and said it was

accurate and consistent with what happened on the night of October 10, 2010. Dunn also testified that Miller informed him that he was standing next to Barahona when the incident took place.

Respondent's Case

Respondent called Daniel Corporan as a witness and testified on her own behalf.

Daniel Corporan

Corporan was a cell phone store owner and had a two-year-old daughter in common with Respondent. He had known Respondent for eight years.

On October 10, 2010, Corporan was with Respondent celebrating their daughter's first birthday party at a restaurant in Yonkers. They had rented the second floor of the restaurant. The party was to start at 1900 or 2000 hours (the night before) and end around 0200 hours. Around 50 family members and friends attended.

During the course of the evening, Corporan became aware that Respondent had gone downstairs because there was "a situation." Corporan stated that Respondent went to see if any members of the party were involved. Corporan followed. He denied that either he or Respondent was intoxicated at the time.

Corporan described the scene outside the restaurant as a large crowd. As Corporan left the restaurant, he saw Respondent standing with a group of officers talking in a very soft tone. Corporan explained that he heard an officer ask Respondent to identify herself. Upon hearing the request for her identification, Corporan offered to get her identification from her purse. An officer told him to shut up.

As he got close to Respondent, Corporan said, he observed that an officer, Barahona, was "in her face." The officer sounded angry and he was cursing. When Respondent "identified herself, not with her picture ID but saying who she was, you know, he said this is not fucking New York City. . . . [T]his is Yonkers, you know, like they are the authority, that she is nobody there."

Corporan testified that Respondent turned around and attempted to talk to a different officer at the scene so she could explain herself. At that time, the other officer said, "[N]o, talk to him, he is asking the questions."

Corporan testified that he then grabbed Respondent's right hand to leave when Barahona grabbed her left hand and said, in sum and substance, "[N]o, bitch, now I want to know who the fuck you are." Corporan stated he was then arrested by other officers.

Other than attempting to walk away with Respondent, Corporan stated that he did not do anything else that led to his arrest. Corporan said that he was arrested for obstructing governmental administration and disorderly conduct. Corporan noted that he received an adjournment in contemplation of dismissal (ACD), and his case was subsequently dismissed.

On cross examination, Corporan acknowledged that he spoke on the phone with an NYPD investigator, Dunn, about Respondent's arrest. Corporan denied that he told Dunn he went from the second floor to the exit with Respondent. He also denied telling Dunn he was with Respondent when Yonkers police officers approached them and asked them what was going on.

Corporan asserted that he moved closer to Respondent because he could not hear what was being said as she spoke to the officers.

Respondent

Respondent had been a member of the Department for eight years and was assigned to Narcotics Borough Manhattan North. She was promoted to Detective in 2008. She never had been the subject of formal discipline in the past. When asked if she had received any medals or commendations, she answered, "I never put in for them."

Respondent testified that she had two daughters. The elder was eight years old and the younger was two. Respondent was "involved" with Corporan, the father of the younger girl.

On October 10, 2010, Respondent was celebrating her younger daughter's first birthday party on the second floor of a restaurant in Yonkers. Respondent said 40 to 50 people were attending. The party started at 1900 hours and was scheduled to end around 0200 hours. Respondent stated that she was not intoxicated because she does not drink alcohol. She did not notice if Corporan had any alcohol that evening.

During the evening it was brought to Respondent's attention that there was a large police presence outside. Respondent testified that she left the second floor of the restaurant to inquire on what was happening and to make sure whatever was happening had nothing to do with her party.

Respondent exited the building and saw a large police presence. She walked over to a couple of officers but was stopped by Barahona. Barahona told her she could not go that way. He did not want to answer any of her questions and told her to leave. Respondent told him, "[T]here is no need for you to be so nasty," and identified herself "right away verbally" as a detective with the NYPD. Barahona told her, "[W]ell, that's NYPD. This is fucking Yonkers PD."

Respondent asserted that she was not trying to get past the officers and simply wanted to ask them what was going on. She did not curse at Barahona.

Respondent testified that she was “embarrassed” at the way Barahona spoke to her because she had already identified herself as an officer and he yelled at her in front of so many police officers. She asked him, “[W]hy are you being so disrespectful? All I wanted to do was ask a simple question for the simple reason that I have a party upstairs.” Barahona responded by saying, “I’m not fucking answering no fucking questions right now. As a matter of fact, where the fuck is your ID?”

Respondent stated to Barahona that she did not have her ID on her and that it was in her purse. Respondent testified that Corporan, who she did not know was standing behind her, offered to get her ID. Barahona told him to shut up and mind his own business.

Respondent explained that she then looked to her right, toward Miller, and said, “I just want to ask you a question. . . . Your partner is yelling and screaming at me for no reason.” Respondent told Miller she was not being rude and just wanted to make sure the incident had nothing to do with her party.

Respondent stated that Miller said to her that Barahona was asking her a question “and the question is where the fuck is your ID?” Several seconds later, Corporan told her they should leave and grabbed her left hand. As she turned to walk away, Respondent testified that she heard Barahona state, “[N]o, fuck that. I want to know who the fuck this bitch is.” She was placed under arrest. When she asked why she was being arrested, Barahona told her to “shut the fuck up. This is Yonkers PD. This is not New York City Police Department.” He added, “I’m the one in uniform, and I’m the one running the show.”

Upon transport to central booking, Respondent testified, she wanted to make a phone call to let someone know where her daughter was. She had left her sleeping in a spot at the restaurant. She also wanted to notify the NYPD of her arrest. Barahona told her that she was “not making no fucking phone calls.”

Respondent said that she never refused to identify herself to Barahona at central booking but did request to speak to Ward. When speaking to Ward, Respondent identified where she worked and told him that she was assigned as an undercover officer. Respondent testified that she was concerned about having her picture taken because she was a narcotics undercover. Ward told her that they could still take her photograph.

Several hours later, Respondent was able to make a phone call. She was photographed, but not fingerprinted.

Respondent said she was charged with disorderly conduct, appeared in court, and was given an ACD.

On cross examination, Respondent agreed that she exited the restaurant by herself.

Respondent stated that Barahona was “like really irate. I guess they went to an 85, so I guess their adrenaline was rushing and he was real annoyed and . . . there were so many things happening, I guess they were like irate.”

When told by Barahona that she could not go the way she wanted to, Respondent admitted that she did not leave the location.

When this interaction occurred with Barahona, Respondent acknowledged that Corporan was not with her, but he was standing behind her. Respondent did not know Corporan was behind her until he offered to get her ID, which was in her purse. Respondent contended that she

did not know Corporan was with her because she was speaking low; he moved up to hear what was being said.

Respondent acknowledged that when she approached Barahona, she was walking toward him. He attempted to stop her and told her to leave the area. Respondent admitted that she did not leave. After being told by Barahona that he was not answering any questions, Respondent tried to identify herself to him. She asserted that she “wasn’t given the choice to leave, because at that time we were already in a conversation as to my ID and me saying why he was being so disrespectful.” Respondent agreed that she could have just left instead of questioning Barahona on why he was being disrespectful.

Rather than leaving, Respondent agreed that she spoke to Miller. Respondent denied that she informed Miller that she was going to ignore Barahona and just inquire of Miller. During her official Department interview, however, Respondent agreed that she recounted, “Officer Miller, may I have a word with you, because obviously your partner is being disrespectful to me. He’s in my face. I’m just going to ignore him.”

Respondent asserted that Barahona arrested her without good cause.

Respondent agreed that she did not complain to a YPD supervisor about Barahona’s behavior, either at the scene or at central booking. She was more worried at central booking about notifying the NYPD of her arrest, and finding someone to look after her daughter, than complaining about Barahona. Respondent agreed that neither did she make a complaint after her release from central booking. She did not want to jeopardize Barahona’s career. Respondent acknowledged that she never filed a lawsuit against Yonkers “for any type of false arrest.”

Upon questioning by the Court, Respondent stated that she heard from another child at the party that the police were there. She wanted to make sure the police presence had nothing to

do with her party because she had children there. Some children were old enough to go outside and she wanted to make sure all the children were accounted for and safe. Respondent's concern that someone from her party might be involved with the police presence was that she just wanted to make sure it had nothing to do with her party.

Respondent informed the duty captain about her concerns on being photographed, but he informed her that was procedure for Yonkers.

FINDINGS AND ANALYSIS

Specification No. 1

The instant case took place on October 10, 2010, in Yonkers, New York. It involved an incident between Respondent, who was off duty and at a restaurant, and several Yonkers police officers. Respondent left the restaurant at approximately 0200 hours to inquire about a melee that was taking place in the street. She was concerned that the incident involved adults or children from the first-birthday party she was having for her daughter. In the first specification, it is charged that when one of the YPD officers, Barahona, "put his arm up" and told Respondent "that she could not walk in the direction of an ongoing police incident," Respondent "slapped Police Officer Barahona and stated, in sum and, substance: 'You can't touch me, I'm a girl and I'm a cop.'"

Barahona testified that he responded to the equivalent of a 10-13, in which a large crowd was gathering on the street after a dispute or fight near a restaurant called Panchito's. About a dozen officers were present; the crowd was twice that. Barahona was trying to control and disperse the crowd. Respondent came toward him and he put out his arm to prevent her progress. Respondent walked into his arm.

Barahona did not, however, testify that Respondent slapped him. The police report, RX A, stated that after Respondent was told she could not proceed and to turn around and walk away, she “swatted away the assigned officer’s hand” and told him he could not touch her. Barahona did not testify to this at all. If Respondent had slapped him, or more specifically slapped his arm away from her, the Court would expect that Barahona would have testified to this. As he did not, there is insufficient evidence that it occurred. As such, the Court finds Respondent Not Guilty of Specification No. 1.

Specification No. 4

The fourth specification charges that Respondent was discourteous to Barahona by saying, when he requested her identification, in sum and substance, “I told you already, I don’t fucking have it on me.”

There is insufficient evidence in the record for such a remark. First, Barahona testified that Respondent, when being questioned by Miller, the other YPD officer, about her identification, said, “I already told him I don’t have it.” Thus, if Respondent was discourteous to anyone in this regard, it was Miller, as Miller requested her identification and her response was to Miller about Barahona.

Furthermore, any discourtesy here would be based, in large part, on the use of profanity. Barahona provided no testimony that Respondent said, “I don’t fucking have it on me.” Without that, the Court does not see how Respondent’s re-statement that she did not have her ID was discourteous.

Because the Department failed to prove that Respondent uttered the remark in question to Barahona, and that it was discourteous, the Court finds her Not Guilty of Specification No. 4.

Specification No. 5

The fifth specification also charges Respondent with discourtesy. Here it is alleged that when the YPD officer warned Respondent “to leave the area of an ongoing police incident or be arrested,” she responded, in sum and substance, “‘Arrested? And what the fuck are you going to arrest me for?’”

Barahona testified that when Respondent refused repeatedly to identify herself, he told her that she had to turn around and walk away. Otherwise she would be arrested. Respondent said, “What the fuck am I going to be arrested for?” Respondent testified that she did not use profanity during the incident.

While Barahona might have been a stern and unyielding officer, nothing in his testimony suggested that he would fabricate this use of profanity. This was the only profane statement he ascribed to Respondent. Respondent and the father of her younger daughter, Corporan, on the other hand, had Barahona and Miller cursing in practically every sentence they uttered, sometimes more than once per sentence. This detracted from their credibility.

The Court also notes that Respondent was upset from the outset of the encounter. She left the party, with her baby sleeping upstairs, and went to the street. This purportedly was to determine who was involved in the incident. For whatever reason, she believed that her guests were involved. She, a New York City Police detective, was then rebuffed by on duty officers from another jurisdiction. Evidence that this upset her came in the fact that she persisted, telling Barahona that he did not have to be “so nasty” and demanding to know who was getting arrested. Her state of mind could have led her to use profanity. Respondent and Corporan took pains to refute this natural conclusion, both dubiously claiming that Respondent was speaking so softly that Corporan needed to move closer to hear what she was saying to the officers.

As the Court finds Barahona's testimony more credible than Respondent's, she is found Guilty of Specification No. 5.

Specification No. 6

The sixth specification charges that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by failing to comply with the orders of the on-duty YPD officers "to leave the scene of a police incident that did not involve her." Respondent admitted that Barahona attempted to stop her from walking into the area and told her to leave. Respondent admitted that she did not leave, but asserted that she "wasn't given the choice to leave" because they were "already in a conversation as to my ID and me saying why he was being so disrespectful." What this really means is that Respondent decided to keep arguing with Barahona rather than follow his order. There is no suggestion that it was an unlawful order. Accordingly, the Court finds Respondent Guilty of Specification No. 6.

Specification No. 3

The third specification charges Respondent with discourtesy toward Ward, the central booking supervisor, in that she "refused to identify herself to Lieutenant Ward or tell him where she worked." Ward asserted that he asked Respondent where she worked and for her identification. Respondent told Ward that she was not going to tell him. Respondent, however, testified that she immediately told Ward her name, rank, command, and assignment as an undercover.

Ward had no discernible reason to fabricate an accusation against Respondent that she refused to identify herself. He was a forthright witness and appeared to have no problem with

Respondent. Respondent, on the other hand, was an interested witness as a matter of law. She had no apparent reason to switch from total non-cooperation with Barahona to total cooperation with Ward. The only reason to switch attitudes was, as Barahona testified, she was assured that her daughter was safe and sound. After that, Barahona said, she became cooperative. This account makes more sense than Respondent's, in which she for some reason decided to cooperate with Ward when she had rebuffed Barahona.

Accordingly, the Court finds Respondent Guilty of Specification No. 3 for discourtesy toward Ward by refusing to identify herself or tell him where she worked.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 20, 2004. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

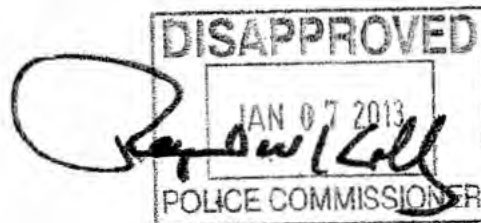
Respondent has been found Guilty of failing to leave the scene of a police investigation when asked to do so by lawful authority. She has also been found Guilty of discourtesy by refusing to identify herself to a police supervisor. The Court notes that while her manner of refusing to identify herself was not appropriate, she had some cause for caution due to her assignment. The Court therefore recommends that Respondent forfeit the 30 days she previously served on suspension as a penalty in this matter. See Case No. 73327/98 (Sept. 4, 1999) (18-year officer with no record forfeited 30 vacation days for being disorderly and "causing a major

scene" during a dispute with airline personnel at an airport; the officer ignored admonitions of responding officers and resisted arrest by fighting with them).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE SANDY MARRERO
TAX REGISTRY NO. 933967
DISCIPLINARY CASE NO. 2010-2951

In her last three annual evaluations, Respondent received an overall rating of 3.5 “Highly Competent/Competent.” [REDACTED]
[REDACTED]

Respondent has not been the subject of any prior disciplinary adjudication.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials