September 6, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Shanturah Brathwaite**
Tax Registry No. 938109
42 Precinct
Disciplinary Case No. 2016-16563

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on March 7, March 8, and April 10, 2018, charged with the following:

DISCIPLINARY CASE NO. 2016-16563

1. Said Police Officer Shanturah Brathwaite, while on-duty and assigned to the 32nd Precinct, on or about May 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: while on an overtime assignment to address a condition in the command, said Police Officer Brathwaite left her post to travel to the scene of her husband's arrest and further followed her husband to the 32nd Precinct stationhouse.

P.G. 203-10, Page 1, Paragraph 5 — **PUBLIC CONTACT – PROHIBITED CONDUCT**

2. Said Police Officer Shanturah Brathwaite, while on an overtime assignment in the 32nd Precinct, on or about May 8, 2015, submitted an Overtime Report (PD 138-084) in which she sought and eventually received overtime pay for work on May 5, 2015, from approximately 1745 hours to 2300 hours, for overtime work that was not performed. *(As amended)*

P.G. 203-20 — **AUTHORIZED LEAVE**

3. Said Police Officer Shanturah Brathwaite, while assigned to the Internal Affairs Bureau, on or about and between September 15, 2016, and September 16, 2016, in the confines of the 32nd Precinct, failed to safeguard an NYPD Restricted Parking Permit (Misc. 23-N). *(As amended)*

P.G. 219-29, Pages 5-6, Additional Data **DISTRIBUTION AND USE OF NYPD RESTRICTED PARKING PERMITS**

In a Memorandum dated June 25, 2018, Assistant Deputy Commissioner David S. Weisel found Police Officer Shanturah Brathwaite Guilty of Specification Nos. 2 and 3 and Not Guilty of Specification No. 1 in Disciplinary Case No. 2016-16563.

Having previously read the Memorandum and analyzed the facts of this matter, I approved the findings, but disapproved the penalty. In a memorandum dated August 30, 2018, I determined that the penalty fifteen (15) vacation days and restitution in the amount of three hundred fifty-eight dollars and seventy-three cents ($358.73) was warranted, and Police Officer Brathwaite was offered the opportunity to pay restitution to the Department by entering into a post-trial negotiated settlement. However, since Police Officer Brathwaite has rejected the offer of a post-trial negotiated settlement, Police Officer Brathwaite, shall forfeit sixteen (16) vacation days, as a disciplinary penalty.

James P. O'Neill
Police Commissioner

OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 30, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Shanturah Brathwaite**
Tax Registry No. 938109
42 Precinct
Disciplinary Case No. 2016-16563

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on March 7, March 8, and April 10, 2018, charged with the following:

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P.G. 203-10, Page 1, Paragraph 5 — **PUBLIC CONTACT – PROHIBITED CONDUCT**

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I have considered the totality of the issues and circumstances of the Specifications for which Police Officer Brathwaite was found Guilty of, and deem that restitution to the Department is warranted.

It is therefore directed that a post-trial negotiated agreement be implemented with Police Officer Brathwaite, in which she shall forfeit fifteen (15) vacation days and pay restitution in the amount of three hundred fifty-eight dollars and seventy-three cents ($358.73), as a disciplinary penalty. If Police Officer Brathwaite does not agree to the terms of this negotiated agreement as noted, this Office is to be notified without delay.

James P. O'Neill
Police Commissioner

The City of New York

POLICE DEPARTMENT

June 25, 2018

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2016-16563
Police Officer Shanturah Brathwaite	:	
Tax Registry No. 938109	:	
42 Precinct	:	

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

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth T. Douglas, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Keith White, Esq.
Law Office of Keith White, PLLC
198A Rogers Avenue
Brooklyn, NY 11225

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Shanturah Brathwaite, while on-duty and assigned to the 32nd Precinct, on or about May 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: while on an overtime assignment to address a condition in the command, said Police Officer Brathwaite left her post to travel to the scene of her husband's arrest and further followed her husband to the 32nd Precinct stationhouse.

   P.G. 203-10, Page 1, Paragraph 5 — CONDUCT PREJUDICIAL

2. Said Police Officer Shanturah Brathwaite, while on an overtime assignment in the 32nd Precinct, on or about May 8, 2015, submitted an Overtime Report (PD 138-084) in which she sought and eventually received overtime pay for work on May 5, 2015, from approximately 1745 hours to 2300 hours, for overtime work that was not performed. *(As Amended)*

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   P.G. 219-29, Pages 5-6, Additional Data — DISTRIBUTION AND USE OF NYPD RESTRICTED PARKING PERMITS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on March 7, March 8, and April 10, 2018. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Jack Ng, Inspector Michael Davidson, Sergeant Tomeka Ruffin, Police Officer Janielle Mendoza, and Sergeant Wilson Ramos as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent *GUILTY* of Specification Nos. 2 and 3, and *NOT GUILTY* of Specification No. 1.

FINDINGS AND ANALYSIS

Introduction

The evidence adduced at trial established the following: On May 5, 2015, Respondent was working a spring violence reduction overtime detail in a police van with her supervisor, Sergeant Tomeka Ruffin, and another police officer, Rivera. Respondent's scheduled overtime tour was 1600 x 0035 hours. The officers were tasked with patrolling the confines of the 32 Precinct and conducting enforcement within designated high-crime areas. Ruffin was the vehicle operator because of the three members, only she was qualified to drive a van (Tr. 60, 87-88, 119, 127, 215-16).

At approximately 1735 hours, Respondent was preparing to issue a traffic summons to a motorist that was stopped on West 145th Street and Bradhurst Avenue when she received a telephone call from her sister-in-law advising that Person A, Respondent's husband, was engaged in an altercation with officers from the 32 Precinct. Person A was the proprietor of a small business within the confines of the 32 Precinct (Tr. 19, 90-91, 102-03, 216-17, 230-31).

Shortly thereafter, a 10-85 call for assistance at the location of West 133rd Street and Adam Clayton Powell Jr. Boulevard (Seventh Avenue), also within the confines of the 32 Precinct, was transmitted over the police radio. At Respondent's request, Ruffin drove the police vehicle to the location of the incident (Tr. 90, 134, 153, 186, 217).

Upon arriving on the scene, Respondent and Rivera exited the van and approached the officers that had responded already. Person A was in police custody when Respondent arrived on the scene. Respondent later learned that Person A was arrested and charged with [redacted] At some point, Sergeant Wilson Ramos, the patrol supervisor, ordered the officers to report back to the 32 Precinct stationhouse. Upon leaving the arrest location, Respondent walked back to the stationhouse, which was not far from the location, with Rivera (Tr. 92-93, 137-38, 190, 194-95, 217-18).

Once at the stationhouse, Respondent met with Inspector Michael Davidson, the commanding officer of the 32 Precinct. During this meeting, Respondent requested and was granted permission to speak with Person A while he was being held at the precinct. Respondent also was permitted to bring him food (Tr. 59, 61, 220-23).

Respondent did not resume enforcement duties for the remainder of her scheduled tour. She nevertheless submitted an overtime report (Dept. Ex. 5) several days later claiming that she worked seven hours of overtime on May 5, 2015. Respondent ultimately received compensation of $476.89 for the overtime hours claimed (Dept. Ex. 6, payroll records) (Tr. 96-97, 243).

On September 3, 2016, the Internal Affairs Bureau received two anonymous letters that contained substantially similar allegations of misconduct against Respondent. The letters arrived at IAB on the same day, but they were written with different print fonts. In each letter, Respondent was accused of improperly allowing her husband to use her Department-issued parking permit to park his personal vehicle near his place of business. Respondent further was accused of receiving undue favoritism from ranking supervisors at the 32 Precinct in connection with Person A's arrest (Tr. 18-19, 49).

Based on the investigative findings, the allegations against Respondent regarding the improper use of her parking permit were substantiated. With respect to the allegations concerning Person A's arrest, IAB did not find any evidence that Respondent received undue favoritism. The investigation nevertheless revealed that Respondent did not resume enforcement duties after responding to the scene of her husband's arrest even though she received compensation for overtime hours she claimed to have worked.

Analysis

Specification No. 1 charges Respondent with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that she left her assigned overtime post on

May 5, 2015, to respond to the scene of her husband's arrest and followed him back to the 32 Precinct. Whether Respondent's actions rose to the level of misconduct is contingent upon a finding that she left her assigned post without necessity or authorization. For the following reasons, the Court finds that Respondent did not leave her post by traveling to the arrest location, and that even if she did, Ruffin, her supervisor on the detail, implicitly authorized her to do so by driving there herself. Finally, Respondent was instructed by the patrol supervisor to go to the stationhouse.

Ruffin indicated that the spring violence reduction post was a mobile post, not a fixed or directed one. They were expected to drive around to spots where violence was prone to pop up as a result of people being out and about in the nicer weather (Tr. 119). In fact, Respondent was issuing a summons to a motorist at the time of Person A's arrest, and it never has been suggested that she was off post for doing so merely because this was not specifically and directly related to a violent act. Person A, on the other hand, was arrested for [redacted]

In any event, Ruffin testified that she drove the police vehicle to the location where Person A was being arrested upon being asked to do so by Respondent. In fact, when Ruffin arrived at the location, she was informed by the arresting officer of what had occurred (Tr. 90-91, 139, 141). The evidence demonstrated that Person A's arrest was a police action taking place within

Respondent's precinct and post, one that Respondent validly responded to with her sergeant's imprimatur. Certainly no one questioned that fact that Ruffin was there, and the arresting officer treated her like any other supervisor. The fact that Respondent was assigned to work in a precinct where her husband operated a business is problematic, but within the context of the specification as written, it was not conduct prejudicial for her to respond to the arrest. And it never has been suggested that she interfered with the arrest in any way.

Ramos, the patrol supervisor, testified on direct examination by the Department that Respondent was on the scene of Person A's arrest, and that he as patrol supervisor instructed "everybody on the scene" to head to the stationhouse. Ramos recalled on cross examination "telling all the officers to go back to the 32 Precinct." Only when asked, "So when you told all of the officers to report back to the 32 Precinct, did you expect Officer Brathwaite to report back to the 32 Precinct?" did Ramos equivocate and say, "If that was her assignment, I was telling the cops that were involved in the arrest to go back to the stationhouse and everybody else goes back on patrol." Ramos nevertheless conceded eventually that if he instructed "all officers that were around the area" to go to the stationhouse, and Respondent was "at the scene," then he expected her to go to the stationhouse as well (Tr. 189-90, 194-95). As such, Respondent did not engage in misconduct when she returned to the precinct after leaving the arrest location.

As such, the Court finds Respondent Not Guilty of Specification No. 1.

Specification No. 2 charges Respondent with submitting an overtime report in which she sought and eventually received overtime pay for work on May 5, 2015, from approximately 1745 hours to 2300 hours, for overtime work that was not performed. For the following reasons, the tribunal finds that Respondent did not resume police duties upon leaving the arrest location on May 5, 2015, and thus was not entitled to receive the overtime compensation.

Respondent testified that upon returning to the 32 Precinct stationhouse after Person A's arrest, she approached the arresting officer and Ramos to obtain more information about the arrest. Respondent claimed that Ramos directed her to step outside of the building, even though she informed him that she was waiting to speak with Davidson, the commanding officer. Respondent maintained that she waited outside for hours before meeting with Davidson. After leaving Davidson's office, Respondent had a brief conversation with her husband, during which time he informed her that he was hungry. Respondent then returned to Davidson's office seeking

permission to leave the stationhouse to get food for Person A. Respondent then left and returned fifteen minutes later with food, delivered it to her husband, and went back to Davidson's office, where he directed her to go end of tour. Respondent maintained that Davidson officially dismissed her at or near 2300 hours. Respondent further asserted that she was under the impression she was still on duty following her husband's arrest (Tr. 218-20, 222-24, 228-29).

Davidson, however, testified that he officially dismissed Respondent from her overtime tour approximately 15 to 20 minutes after Person A's arrest. According to Davidson, Respondent returned to his office after she had been given permission to speak to Person A. At this time, Respondent advised that she needed to pick up her children. Davidson told her to go end of tour, as this was a personal matter, and pick up her children. She could not, Davidson noted, resume the overtime tour once she took care of them (Tr. 59-60, 65-66, 77, 79, 82).

The Court found Davidson to be a disinterested and candid witness. He disclosed that he knew Person A, and knew that he was Respondent's husband, as Person A had participated in some 32 Precinct community events (Tr. 57, 61-62). Davidson also agreed that he himself had been the subject of an IAB investigation regarding an alleged personal relationship with Person A (Tr. 70-71). Yet Davidson showed no signs of undue bias for Respondent, Person A's husband, in his testimony. In fact, it was just the opposite, as Davidson's testimony about the timing of Respondent's departure was unfavorable to her. While Davidson could have testified falsely to shield himself, it should be noted that he also testified he was present at the scene of Person A's arrest, having responded to the 10-85. This was something that Ruffin, Respondent's supervisor, did not observe (Tr. 56, 117). But in light of the accusation that Davidson gave preferential treatment to Respondent, his testimony was an admission against interest and thus bolsters his credibility.

Based on the evidence adduced at trial, the Court finds that Respondent effectively went end of tour 15 to 20 minutes after Person A's arrest. The 10-85 was called at 1740 hours (Tr. 119). Therefore, the Department proved that Respondent was not performing work from approximately 1745 to 2300 hours, as charged in the specification. It is undisputed that she was paid for these hours. Accordingly, the Court finds Respondent Guilty of Specification No. 2.

Specification No. 3 charges Respondent with failing to safeguard her Department-issued parking permit on September 15 and 16, 2016, in violation of Patrol Guide § 219-29. This procedure provides that each Department member in possession of a permit is responsible for securing it while off duty. The procedure further prohibits the display of the permit for any reason other than to park in a designated self-enforcement zone while the member is on duty. The procedure also advises that all members will be held strictly accountable for the permit issued to them. Furthermore, the use of the permit is restricted to the member to which it is assigned and thus non-transferable to anyone else.

Ng, the IAB investigator, testified that he conducted surveillance of the vehicle identified on Respondent's permit application, a 2011 black [redacted] at various locations, including Respondent's residence, Respondent's place of employment, which, at the time was an investigative position at the IAB Command Center, and the area surrounding Person A's business (Tr. 20, 214, 252-53).

On September 15, 2016, at approximately 1000 hours, Ng conducted surveillance near the business. During this time, Ng observed the subject vehicle illegally parked in front of a fire hydrant around the corner from the barbershop. Ng was approximately 20 feet away from the vehicle when he observed a blue piece of paper displayed on the vehicle's dashboard. He "assume[d]" that this was Respondent's placard, although he could not be absolutely certain. Ng did not approach the vehicle any more closely because there were several individuals nearby and

he did not want to tip anyone off to the surveillance. Ng obtained timekeeping records indicating that Respondent was scheduled to work at the IAB Command Center around the time he observed the vehicle (Tr. 20-22, 39-40; Dept. Exs. 1 & 2, photographs of vehicle).

On September 16, 2016, at approximately 0600 hours, Ng and his subordinates observed Respondent's vehicle pull up in front of the IAB Command Center, which is located downtown, at [redacted] Street in Manhattan. Investigators next observed Respondent exit the vehicle from the passenger side. Once Respondent was inside the building, the vehicle drove off and headed uptown. At approximately 0645 hours, Ng observed the vehicle in question parked illegally in a no-standing zone in the vicinity of the business. Upon closer inspection, Ng observed and photographed Respondent's parking permit prominently displayed on the vehicle's dashboard (Tr. 26-27; Dept. Exs. 3 & 4, photographs of vehicle and permit).

At trial, Respondent did not dispute that she was working at the time the permit was observed inside her personal vehicle on September 16, 2016. Respondent testified that her husband had dropped her off at work on both dates, and she further disclosed that he was in possession of the vehicle at the times in question. Respondent also admitted that she failed to remove the parking permit from the vehicle when she left for work on both dates. She also disclosed that Person A was well aware of the fact that she regularly left the permit inside the vehicle's glove compartment (Tr. 252-55).

Respondent admitted that she left the parking permit in the car on both dates. Doing so and giving another person access to the vehicle constitutes failure to secure the permit, regardless of whether the member intends for another person to use the permit. See *Case No. 2012-7290* (Dec. 28, 2012) (member went on vacation and left his personal vehicle, which had his parking permit in the driver-side visor, with his brother; although the brother had his own car and member did not expect him to use member's car, the brother made a photocopy of the permit and

placed the photocopy in his own car, leading to member's guilty plea). As such, the Court finds Respondent Guilty of Specification No. 3.

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 July 11, 2005. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that Respondent forfeit 25 vacation days and be directed to pay restitution as a penalty for her misconduct in this case. The Court finds this amount of vacation days to be excessive in light of the facts and precedent.

First, Respondent was on track to become a Detective while assigned to an investigative position at the Internal Affairs Bureau. As a result of the allegations in this case, she was administratively transferred to the 42 Precinct and no longer is on track to become a Detective (Tr. 214-15).

In recent cases involving similar acts of misconduct the penalty imposed was 15 vacation days. See *Case No 2016-15530* (Oct. 25, 2017) (negotiated penalty of 15 vacation days, forfeiture of 23 hours and 46 minutes of leave, and restitution for: [i] receiving compensation for enforcement duties not performed during regular tour hours on 12 occasions; [ii] receiving overtime compensation for enforcement duties not performed on two occasions; [iii] submitting two overtime reports for work not performed; and [iv] causing false or inaccurate entries to be made in activity log); *Case No. 2016-16052* (Dec. 8, 2016) (negotiated penalty of 15 vacation days, deduction of 19 minutes from leave, and restitution for: [i] false or misleading overtime reports; [ii] requesting and receiving overtime payment to which member was not entitled; [iii]

reporting late for duty without prior authorization; [iv] failing to make required activity log entries; and [v] failing to submit leave of absence report on two occasions).

In sum, the Court recommends that Respondent forfeit 15 vacation days as a penalty. Although this tribunal cannot impose restitution as part of the penalty, as it is not contained in the list of authorized penalties in Administrative Code § 14-115 (a), the Police Commissioner has the authority to do so.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

DISAPPROVED
AUG 30 2018
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SHANTURAH BRATHWAITE
TAX REGISTRY NO. 938109
DISCIPLINARY CASE NO. 2016-16563

Respondent was appointed to the Department on July 11, 2005. Her last three performance evaluations were as follows: Respondent was rated 3.5 "Highly Competent/Competent" in 2016, 3.0 "Competent" in 2015, and 4.0 "Highly Competent" in 2014.

[redacted] She has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials