

# ***Triborough Bridge & Tunnel Auth. v. Houston***

OATH Index No. 104/21 (Jan. 5, 2023), *adopted*, Pres. Dec. (Feb. 28, 2023), **appended**

Petitioner did not establish that Respondent, a sergeant, unlawfully ordered a bridge and tunnel officer (“BTO”) to dispose of marijuana recovered during a vehicle traffic stop. Petitioner did not establish that Respondent failed to take law enforcement action against the driver of the vehicle or that Respondent failed to document the recovery of marijuana. ALJ recommends that charges against Respondent be dismissed.

---

**NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND HEARINGS**  
*In the Matter of*  
**TRIBOROUGH BRIDGE & TUNNEL AUTHORITY**  
*Petitioner*  
*- against -*  
**DANIEL HOUSTON**  
*Respondent*

---

## **REPORT AND RECOMMENDATION**

**JOYCELYN MCGEACHY-KULS**, *Administrative Law Judge*,

This disciplinary proceeding was referred by Petitioner, the Triborough Bridge and Tunnel Authority (“Petitioner” or “TBTA”), pursuant to section 75 of the Civil Service Law. Petitioner alleged that respondent, Bridge and Tunnel Sergeant Daniel Houston, committed misconduct by failing to issue a summons to a driver upon the recovery of marijuana from the vehicle operated by the driver; ordering a subordinate officer to dispose of, discard or destroy the recovered marijuana in a sewage drain; and failing to keep an accurate account or accurately record the recovery of the marijuana from the motor vehicle (ALJ Ex. 1).

The trial was conducted remotely via Webex due to the COVID-19 pandemic. Petitioner presented documentary evidence and testimony of three witnesses: Investigator C. Munoz, Chief Security Officer D. Look, and Assistant Chief of Operations E. King. Respondent testified in his own behalf and presented the testimony of Sgt J. Weissmeier.

Petitioner is seeking a penalty of 20 days suspension without pay. For the reasons below, I find that Petitioner did not prove that Respondent engaged in the alleged misconduct and recommend that the charges be dismissed.

## **BACKGROUND**

Respondent has been employed by TBTA since 2002. He was promoted to sergeant in 2010 and is currently assigned to Special Operations Division in the Highway Unit. Respondent estimated that he has written thousands of summonses over his career, adding that he averages between 800 and 1200 in a year. He has made 300 to 400 arrests during his career, including more than 20 for marijuana, but he has never issued a summons for contraband (Tr. 417, 418).

The charges against Respondent stem from allegations made by Officer Moy, who was under investigation for the charged misconduct. Petitioner relied on the statements of Officer Moy to establish the charges against Respondent.

As discussed below, Respondent denied ordering Officer Moy to discard the marijuana. I found his testimony more credible than the hearsay statements to the contrary attributed to Officer Moy in the investigatory report. I also found the investigatory report unreliable in its characterization of statements made by Respondent during his investigatory interview. Further, I found that Respondent was not under an obligation to take law enforcement action against the driver or to document or record the disposal of the marijuana during the car stop.

### *The Incident*

It is not disputed that on October 9, 2017, Officer Moy initiated a stop of a vehicle because it was speeding. Upon pulling the car over, Officer Moy observed that the car was occupied by a driver and two passengers and called for assistance with his stop. The driver could not produce a driver license or registration for the vehicle. When Respondent arrived at the scene to assist Officer Moy, he approached the car and smelled burnt marijuana. He conducted a vehicle search and found marijuana in the rear passenger side compartment. Neither the driver nor the occupants of the car claimed ownership of the marijuana. Officer Moy discarded the marijuana, and the vehicle was towed. Officer Moy issued summonses to the driver for speeding and driving without a license. Officer Moy did not issue a summons for possession of marijuana to any of the occupants of the car. The marijuana was not vouchered.

## Petitioner's Case

### *The Investigation*

On January 16, 2018, Petitioner's Office of Inspector General ("OIG") received an anonymous complaint alleging that Officer Moy had abused his authority as a highway patrol officer by confiscating marijuana from motorists on multiple occasions without documenting it and on another occasion, taking confiscated marijuana home. The complaint alleged that Officer Moy used marijuana while he was on the job, and that he had provided false specimens on his drug tests. The complaint also included photographs that Officer Moy took during the stop that became the subject of this investigation (Pet. Ex. 23).

The complaint was referred to the Special Investigation Division ("SID") and assigned to Investigator Munoz. Investigator Munoz has been employed as an investigator with the Authority since 2018 and testified that she has conducted over 200 investigations. She asserted that she is a state peace officer but could not recall the duties or responsibilities of that position (Tr. 224). When this matter was assigned to her, Investigator Munoz had been with the Authority for only a few weeks, and this was her first investigation (Tr. 172). She recalled that the complaint involved allegations that Officer Moy provided fake urine samples for his drug test and that he confiscated and retained marijuana during vehicle stops. The complaint included a screenshot of a young man next to a TBTA patrol car and a bag with a green leafy substance, which appears to be marijuana (Pet. Ex. 23; Tr. 134-35). Investigator Munoz confirmed that the incident in issue occurred on October 9, 2017, and that Officer Moy issued a summons to the driver for excessive speed and for driving without a license (Pet. Ex. 12; Tr. 143). As part of this investigation, Investigator Munoz reviewed the documents pertaining to the car stop, including the incident report, summonses, the vehicle inventory form, and officer activity logs. Investigator Munoz reviewed Respondent's activity log and discovered that there was no record of the vehicle stop or any confiscation of marijuana (Pet. Exs. 13, 15, 16; Tr. 148, 154).

Investigator Munoz summarized her investigation protocol, sharing that when she is assigned a case, she interviews witnesses, then contacts the subject of the investigation. Prior to interviewing a member of staff ("MOS"), Investigator Munoz coordinates with the union to schedule the date and time of the interview, then sends out investigation notices which are signed by the officer and the union representative. Investigator Munoz offered that she prepares for interviews by writing her questions in advance and during the interview, she writes interviewee

responses underneath the appropriate questions. At the conclusion of the investigation, Investigator Munoz drafts a case closing memo or Closing Report. In this Closing Report, she documents all interviews conducted and states her findings based on the information reviewed (Pet. Ex. 6; Tr. 97).

Following the completion of the Closing Report, Investigator Munoz drafts a Referral to the chief security officer, recommending that substantiated charges be filed against MOS. Investigator Munoz described the Referral as essentially the same as the Closing Report with a few changes in the first paragraph, the findings, if necessary, and “the footer is different.” She testified that the interview summaries in the Closing Report are the same as the summaries in the Referral and “all the information remains the same” (Tr. 158). In this investigation, Investigator Munoz testified that she typed the Closing Report and Mr. D’Amora, one of her supervisors, reviewed it. After his review, Investigator Munoz typed the Referral (Tr. 157).

Investigator Munoz testified that she interviewed Officer Moy just once “in the beginning of 2018, either January, February, March.” She later testified that she conducted the first interview on January 23, 2018 (Tr. 140). Pursuant to her protocol, Investigator Munoz issued an investigation warning dated March 9, 2018, indicating that Officer Moy was the subject of the investigation (Pet. Ex. 24). Officer Moy appeared at the interview with his union representative. Investigator Munoz’s supervisors, Mr. D’Amora and Mr. Cummins, were also present, but Investigator Munoz claimed that she asked most of the questions. She took notes during the interview and later transcribed the notes for the investigation memo (Pet. Exs. 8, 19). Investigator Munoz recalled that she interviewed Officer Moy a second time, “about a week later,” after she obtained the dates of his drug test (Tr. 70). She conducted this interview alone and questioned Officer Moy about his vehicle stop on October 9, 2017, and the allegations that he used marijuana and confiscated marijuana from drivers that he pulled over. Investigator Munoz testified that Officer Moy denied the allegations but stated that Respondent ordered him to dispose of confiscated marijuana down a sewer drain (Tr. 141).

Investigator Munoz interviewed Respondent on March 15, 2018. The interview notice dated March 11, 2018, and the investigation warning dated March 15, 2018, both indicated that Respondent was being interviewed as a witness in an investigation (Pet. Exs. 21, 22). Respondent and his union representative attended the interview along with Investigator Munoz and her supervisors, Mr. Cummins and Mr. D’Amora. According to Investigator Munoz, the interview

lasted between 15 and 45 minutes and she asked between 10 and 20 questions (Tr. 57, 246). Investigator Munoz asserted that she asked, “98 percent of the questions” and Mr. Cummins asked “two or three questions” (Tr. 152). She later testified that Mr. Cummins asked “three or four” questions and Mr. D’Amora asked “two or three” questions (Tr. 173). Investigator Munoz said that she did not write Mr. Cummins’s questions because she was planning to ask the same questions and had already written them in her notes. In recounting the interview, Investigator Munoz could not recall who said they recovered the marijuana, and she did not attribute any specific statements to Respondent. However, she asserted that Respondent ordered Officer Moy to dispose of the marijuana in the sewer drain due to its small amount (Tr. 151, 152).

Investigator Munoz did not ask Respondent about his tour report during the interview. Investigator Munoz also recalled that Mr. Cummins and Mr. D’Amora discussed the law enforcement action that Respondent should have taken (Tr. 179, 217).

Investigator Munoz acknowledged that Officer Moy was the subject of the investigation when he made the allegations regarding Respondent’s conduct and that Officer Moy was facing potential discipline as a result of the allegations against him. She acknowledged that the complaint received by OIG was against Officer Moy and that there no allegations involving Respondent. Investigator Munoz testified that the investigation’s change in focus from Officer Moy to Respondent was based solely on Officer Moy’s statements. Investigator Munoz characterized Respondent as candid and forthcoming during his interview and said that she did not attempt to verify the information that he provided (Tr. 198, 200, 208).

Investigator Munoz confirmed that officers have discretion in making decisions, explaining that an officer may handle a situation as they deem appropriate. She elaborated that an officer “could let the operator of the vehicle just walk away or issue a summons, depending on why the operator was stopped” (Tr. 203). However, she was unsure, “off the top of her head,” if the exercise of discretion extended to the discovery of marijuana (Tr. 206). Investigator Munoz testified that she was not aware of any basis that Respondent had to attribute the marijuana to the driver or any particular individual in the vehicle, adding that since no one confessed to owning it, she did not know if Respondent would have probable cause to arrest the driver. Investigator Munoz supposed that Respondent could “at least issue a summons,” then asserted that “they” should have issued a summons (Tr. 183, 203). However, in her investigation findings, Investigator

Munoz did not conclude that Respondent failed to take proper law enforcement action by not making an arrest or issuing a summons (Tr. 177).

Investigator Munoz did not receive a vehicle inventory form and supposed that this form was not completed by either Respondent or Officer Moy. She explained Petitioner's vehicle inventory policy, stating that the officer or the responding supervisor must document anything that is found in the vehicle at the time of the inventory and that the officer's perception of an item's insignificance is not relevant. Investigator Munoz testified that she did not ask Officer Moy or Respondent about this form (Tr. 213, 231).

*Investigation Memoranda, Closing Report, Referral, and Activity Log*

Investigator Munoz testified that she always types her interview notes and drafts the interview [investigation] memo, immediately after the interview, "while it is still fresh in [her] mind." She insisted that this is her practice "every single time" (Tr. 187). She also asserted that "every single question" that she asks in the interviews is documented in her notes (Tr. 248). She submits the completed investigation memos and the Closing Report for her supervisor's review and sign off (Tr. 49, 187). The Closing Report included her findings which were based on the summaries of witness statements and her review of memo book and activity log entries.

According to Investigator Munoz's handwritten notes from the first interview with Officer Moy, he stopped the car because it was speeding. Officer Moy stated that he had taken a photo of the driver but could not recall whether he posted it on social media. Officer Moy stated that he takes photos of people if they are unable to provide identification and they try to deny or fight the summons. He called for assistance because the conditions of the stop were unsafe. Respondent responded and recovered the marijuana from the back compartment of the car. Officer Moy also stated that he photographed the marijuana but did not voucher it because when he asked what to do, Respondent advised him to "throw it down the drain." Officer Moy also stated that Respondent advised him to issue a summons and "toss the marijuana" (Pet. Ex. 19).

According to Investigator Munoz's handwritten notes from the second interview, Officer Moy acknowledged Petitioner's drug policy and described the random drug test that he underwent in 2017. He stated that he has never done anything to "circumvent the process" and denied using marijuana. Investigator Munoz wrote that Officer Moy said he "was only following orders" and

Respondent “never asked him to do it before,” presumably referring to the disposal of the recovered marijuana (Pet. Ex. 20).

Following her interview of Officer Moy, Investigator Munoz drafted a typed memorandum containing a summary of her notes. Although it is protocol for interview memos to be reviewed and initialed by her supervisor, Mr. Cummins did not initial Investigator Munoz’s memo. Investigator Munoz testified that she did not notice the missing initials and was not able to explain the omission (Tr. 244). The memo indicates that the notes are from the March 9, 2018 interview and does not reference the subsequent interview (Pet. Ex. 20). Investigator Munoz wrote in her memo that Officer Moy stated that Respondent “ordered” him to dispose of the marijuana, however in her interview notes, she wrote that Respondent “advised” Officer Moy to dispose of the marijuana. Investigator Munoz explained that Respondent “told [Officer Moy] to do it. Respondent advised him. That’s the word [Officer Moy] used” (Tr. 221). But Investigator Munoz also wrote that Respondent “asked” Officer Moy to throw the marijuana out. She clarified that Officer Moy said “advised” and she substituted the word “asked.” She testified that she did not know why she made that substitution (Tr. 221). Investigator Munoz further conceded that Officer Moy might not have said that Respondent ordered him, but supposed that since Respondent is a sergeant, Officer Moy would interpret Respondent’s opinion as an order (Tr. 222).

Investigator Munoz interviewed Respondent on March 15, 2018. Her interview questions, written on a separate piece of paper, consisted of pedigree and general questions about the incident (Pet. Ex. 17). In her notes she recorded that the incident involved a vehicle stop that Officer Moy made and that the state police also responded. There were two passengers in the car and the driver was outside of the car when he arrived. The driver was “playing games with names” but Respondent was able to identify the driver through social media. Respondent conducted a vehicle inventory search due to a faint smell of burnt marijuana. Respondent said that he recovered and showed Officer Moy the drugs and “he held it.” Respondent said that since it was an insignificant amount of marijuana, NYPD would not want to be bothered. Officer Moy disposed of it in a drainpipe. Respondent also said that he has not often discarded insignificant amounts of marijuana. Investigator Munoz wrote that Respondent said that he “did not want to voucher [the marijuana] because it takes a lot of hours” (Pet. Ex. 18).

The investigation memo that Investigator Munoz drafted after the interviews stated that Respondent “routinely conducts” social media account searches when individuals do not have

identification. She also wrote that Respondent “ordered Officer Moy to unlawfully dispose of the marijuana in the sewage drain because it was what Respondent considered ‘an insignificant amount and not worth vouchering’” (Pet. Ex. 7).

Investigator Munoz drafted the Closing Report on March 22, 2018. In the report, Investigator Munoz outlined six findings including that “[Respondent] conducted an inventory search of the vehicle, found a bag of marijuana and ordered Officer Moy to unlawfully dispose of the marijuana,” and that “[Respondent] was adamant that by unlawfully disposing of the marijuana, no authority policy or procedure was violated.” The findings in the report note that the allegations were “substantiated” (Pet. Ex. 6). In the Referral from the chief security officer, the findings were revised to include that “[Respondent] and Officer Moy did not take proper law enforcement action and effect an arrest for the contraband marijuana.” The Referral also stated that the investigation was closed with a disposition of “partially substantiated” (Pet. Ex. 1). Investigator Munoz was unsure how the change from substantiated to partially substantiated came about. She testified that it was “based on management,” adding that Mr. D'Amora might have determined the allegations were partially substantiated (Tr. 161).

Respondent’s activity log for October 9, 2017, notes that at 3:00 a.m. Respondent provided back up for Officer Moy, that the driver did not have identification, and that at 4:10 a.m. a vehicle inventory was performed (Pet. Ex. 15).

#### *Additional Testimony*

D. Look is vice president and Chief Security Officer (“CSO”). His duties involve the oversight of security for the Petitioner, including SID. He testified that he was familiar with Investigator Munoz’s investigation into this incident but had very little interaction with her. He also asserted that he had no involvement in the investigation and did not interview any witnesses (Tr. 279, 281). CSO Look recalled that he received a Referral from SID for his signature. He explained that at the conclusion of an investigation, the investigator writes a closing memo and then prepares a Referral for his signature. He asserted that he reviews the Closing Report for grammatical errors and for “ease of comprehension” and characterized his review as a formality (Tr. 684). CSO Look testified that although the Referral was in a memorandum format stating that it is from him, the document was written by Investigator Munoz, approved by her supervisor and that he signed off on the document (Pet. Ex. 1; Tr. 287). He said that his role in this process was



not to review or second-guess the investigation. While CSO Look did not recall the details of this incident, he concluded that some type of law enforcement action, either a summons or an arrest, was necessary (Tr. 297).

Petitioner also presented the testimony of E. King, Assistant Chief of Operations. He testified that he was familiar with Petitioner's car stop policy and offered that BTOs usually make car stops because they are on patrol (Tr. 352). Assistant ("Asst.") Chief King continued that if a MOS discovers marijuana during a car stop and Petitioner takes possession of the vehicle, the officer would have to itemize the property found inside of the vehicle. He asserted that uniformed MOS are required to inventory all contraband found during a car stop, adding that there is no policy within TBTA that permits a uniformed MOS to discard marijuana discovered in a car during the car stop (Tr. 361, 375, 393).

Asst. Chief King noted that under section 5.3.3 of Petitioner's Summons Procedure, MOS may use their discretion and issue a warning if they believe that a warning would be sufficient to deter a motorist from repeating certain conduct (Tr. 384, 394). However, he cautioned that if an officer identifies contraband on a person in a vehicle, a summons or arrest is necessary. Asst. Chief King testified generally that MOS are required to document the car stop in their memo books but added that sergeants do not necessarily have the same requirement. He elaborated that although there was no policy that required a sergeant to document the details of an officer's stop, MOS are required to document their activities during their tours (Tr. 379). Asst. Chief King noted that if the sergeant responded to assist an officer during a vehicle stop and had some involvement in the stop, the sergeant would note in his memo book that he was at the scene. He testified that the sufficiency of the entry is subjective and depends on the circumstances (Tr. 380). Asst. Chief King was not sure if sergeants in the Highway Unit are required to complete tour reports but noted that this kind of report was geared toward Facility Operations. He reviewed the relevant entry in Respondent's activity log and characterized it as "minimalist," adding that officers normally include details such as others present and the circumstances for the stop (Tr. 381).

### *Respondent's Evidence*

Respondent recalled that Officer Moy called for assistance with his traffic stop citing unsafe conditions based on the number of individuals involved as well as low light conditions (Tr. 421). When Respondent arrived, Officer Moy had already pulled over the vehicle and had

interacted with the passengers and the driver (Tr. 422). He offered that the reason for the stop was speeding, and that Officer Moy issued summonses to the driver for speeding and an unlicensed, unregistered vehicle (Tr. 422).

Respondent recounted that when he approached the vehicle, he smelled burnt marijuana and asked the passengers to exit the car. Respondent asked them if there was marijuana in the car and a passenger told him that there was a small bag of marijuana in the side compartment of the rear passenger door. However, nobody claimed ownership of the marijuana and Respondent did not conclude that it belonged to the driver (Tr. 423). According to Respondent, Officer Moy asked his opinion on how to proceed and Respondent explained the options to Officer Moy. Respondent advised Officer Moy that he could write a summons or make an arrest noting that Officer Moy would have to determine the owner of the marijuana. Respondent also advised that since no one confirmed ownership of the marijuana, Officer Moy could discard the marijuana and issue a warning. Respondent denied that he ordered or advised Officer Moy to discard the marijuana, insisting that he merely explained Officer Moy's options (Tr. 489). Respondent maintained that this was Officer Moy's stop. He stressed that the decision to issue a summons for marijuana or any other violation was Officer Moy's because he was the contact officer who initiated the stop. Officer Moy told Respondent that he would dispose of the marijuana. Respondent did not recall how Officer Moy disposed of the marijuana and he did not know if Officer Moy issued a warning because he stepped back to the patrol car (Tr. 437, 458, 474, 491).

Respondent characterized the decision to arrest, issue a summons, or issue a warning as a field decision. He testified that he did not find Officer Moy's decision to issue a warning and discard the marijuana to be inappropriate, explaining that a MOS may exercise discretion in certain circumstances. Respondent believed that the amount of marijuana found would warrant a violation and elaborated that MOS have discretion whether to issue a summons for violations (Tr. 456, 457). In defending an officer's use of discretion in field actions, Respondent cited the summons procedure which states that "an officer may give a warning rather than issue a summons if he or she believes that such action will deter motorists from repeating the offense committed or in conformance with the Authority's mission" (Tr. 495). He asserted that under Petitioner's summons policy, a warning is encouraged for a violation of a summonsable offense, and he was never advised that he did not have discretion to issue a warning instead of a summons for a

marijuana violation. Respondent testified that he has vouchered marijuana but there was usually another arrest charge attached to it (Tr. 420, 457, 489).

Respondent also referenced a New York Post article, which reported that former NYPD commissioner Bill Bratton used his discretion to issue a warning to a young person for smoking marijuana rather than making an arrest. According to the article, Bratton discarded the marijuana (Tr. 426; Pet. Ex. D).

Respondent was interviewed on March 15, 2018, and he recalled that Mr. D'Amora, Mr. Cummins, and Investigator Munoz were present. He stated that Mr. Cummins and Mr. D'Amora asked most of the questions and characterized Investigator Munoz's involvement as that of a note taker. However, Respondent noticed that Investigator Munoz did not appear to be writing the entirety of his responses and Investigator Munoz did not ask Respondent to review the accuracy of her notes (Tr. 433). Upon review of Investigator Munoz's investigation memo at trial, Respondent insisted that he did not state that he "ordered BTO Moy to unlawfully dispose of the marijuana in the sewage drain" (Pet. Ex. 7). Respondent stated that he did not characterize the disposal of the marijuana as unlawful and denied that he ordered Officer Moy to take that action (Tr. 435). Respondent also contended that there were other statements made during the interview that Investigator Munoz did not include in the notes. Respondent recalled that he had a "heated" exchange with Mr. D'Amora and Mr. Cummins and that none of those statements were included in Investigator Munoz's memo (Tr. 437). Respondent was not asked about the vehicle inventory log during the interview.

Sgt. J. Weissmeier is a training academy instructor and has been employed by TBTA since 2004. He testified that car stop training was a mandatory training class for bridge and tunnel officers but is not required for sergeants (Tr. 504). He stated that he encourages BTOs to use discretion in field decisions adding that this was part of "verbal judo training." Sgt. Weissmeier explained that verbal judo is a de-escalation technique that BTOs may use when interacting with motorists. According to Sgt. Weissmeier, BTOs have the discretion to issue summonses or warnings to "lower tensions" with motorists. He added that his training did not include scenarios involving marijuana and that the training did not differentiate between marijuana violations and other traffic violations (Tr. 506).

Regarding memo books and activity logs, Sgt. Weissmeier asserted that a sergeant would not be required to document the recovery of marijuana in his memo book if he responded to a

scene to support a bridge and tunnel officer and there was a potential violation level offense for marijuana with no arrest. He elaborated that if the BTO did not make an arrest, there would be no reason for the supervisor to document an action that was not performed or that he was not responsible for performing (Tr. 509, 516).

### ANALYSIS

To prevail under section 75 of the Civil Service Law, petitioner must prove the charges by a preponderance of the credible evidence. *See Dep't of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-33-SA (May 30, 2008). "If the evidence is equally balanced, or if it leaves the [trier of fact] in such doubt as to be unable to decide the controversy either way, judgment must be given against the party upon whom the burden of proof rests." Prince, Richardson on Evidence § 3-206 at 110 (11<sup>th</sup> ed. 1995); *see also Rinaldi & Sons, Inc. v. Wells Fargo Alarm Service, Inc.*, 39 N.Y.2d 191, 196 (1976); *Dep't of Correction v. Jackson*, OATH Index No. 175/03 at 14 (Jan. 30, 2003). Satisfaction of petitioner's burden rests on the relative credibility of its witnesses. In assessing credibility of testimonial evidence, relevant considerations include demeanor, consistency of testimony, supporting evidence, witness motivation, bias, or prejudice, and whether the testimony comports with common sense and human experience. *See, e.g., Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998).

Petitioner presented Officer Moy's statements made to Investigator Munoz as she reported them in her interview memo, Closing Report, and Referral. Investigator Munoz testified that she relied exclusively on Officer Moy's statements in referring charges against Respondent. Officer Moy did not testify at trial and his statements made during the interviews were not under oath. Accordingly, Investigator Munoz's interview notes and her summary of those notes constituted hearsay. Sworn testimony is usually considered more reliable than hearsay statements. *See Dep't of Correction v. Velez*, OATH Index No. 1655/02 at 5 (Dec. 3, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD-05-34-SA (Aug. 11, 2005). While hearsay is admissible in the quasi-judicial administrative proceedings conducted at OATH and may provide the sole basis for an administrative adjudication, it must have probative value and bear some indicia of reliability in order to be given significant weight. *See Dep't of Housing Preservation & Development v.*

*Davron*, OATH Index No. 1533/11 at 16 (Dec. 21, 2011); *see also* Charter § 1046(c)(1) (Lexis 2022); 48 RCNY § 1-46 (Lexis 2022); *Gray v. Adduci*, 73 N.Y.2d 741, 742 (1988); *People ex. rel Vega v. Smith*, 66 N.Y.2d 130, 139 (1985); *S & S Pub, Inc. v. NYS Liquor Auth.*, 49 A.D.3d 654 (2d Dep't 2008); *Dep't of Correction v. Jackson*, OATH Index No. 134/04 at 4-5 (May 5, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-67-SA (Sept. 14, 2005); *Police Dep't v. Ayala*, OATH Index No. 401/88 at 5 (Aug. 11, 1989), *aff'd sub nom., Ayala v. Ward*, 170 A.D.2d 235 (1st Dep't 1991).

To evaluate the probative value and reliability of hearsay evidence, courts and this tribunal have relied on factors such as “the identity of the hearsay declarant, the availability of the declarant to testify, the declarant’s personal knowledge of the facts, the independence or bias of the declarant, the detail and range of the hearsay, whether the statements were oral or written, signed and sworn or unsworn, the degree to which the hearsay is corroborated, the centrality of the hearsay evidence to the agency’s case, and the magnitude of the administrative burden should the hearsay be excluded.” *Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. Ogonna*, OATH Index No. 165/17 at 7 (Jan. 17, 2017), *adopted*, HHC Personnel Review Bd. Dec. No. 013/17 (June 13, 2017); *Dep't of Environmental Protection v. Cortese*, OATH 1613/06 at 7 (Sept. 12, 2006).

Investigator Munoz’s report was based entirely on oral and unsworn statements and hearsay reported by Officer Moy. She confirmed that her investigation shifted from a review of Officer Moy’s conduct to a review of Respondent’s conduct based on nothing other than Officer Moy’s statements. The focus of the investigation shifted from Officer Moy to Respondent, simply because Officer Moy denied the conduct alleged in the complaint and stated that any misconduct he might have committed was at the direction of Respondent. Investigator Munoz did not offer any reason for deciding to rely upon the statements of Officer Moy, who as the subject of the investigation was facing disciplinary action and therefore had a motive to be untruthful. She disregarded Officer Moy’s obvious bias and credited his account of events over Respondent’s account. In addition, Investigator Munoz did not testify that she believed Officer Moy was telling the truth, that he was more credible or even that his account comported with experience or common sense. Petitioner did not call Officer Moy and did not explain this omission.

Investigator Munoz’s investigation memos and reports were problematic. There were some inconsistencies between her handwritten notes and her typed interview summaries; specifically, there were statements included in the summaries which were unsupported by her notes.

Investigator Munoz stated that “for the most part,” she wrote down Respondent’s responses “word-for-word” (Tr. 232). However, Investigator Munoz acknowledged that she inexplicably changed the characterization of Officer Moy’s account from “asking” or “advising,” as she wrote in her notes, to “ordering,” as she reported in her interview memo, Closing Report and Referral. She explained that it was a mistake due to an “oversight”. Investigator Munoz claimed that she crossed those words out in her notes but there were no such edits in her written notes. (Tr. 262). Investigator Munoz also stated that she did not include Respondent’s description of the “faint smell” of marijuana in her interview summary or subsequent reports “probably due to oversight” (Tr. 262).

This tribunal has found investigation reports unreliable where the accuracy of hearsay statements is challenged and where the investigator preserved hearsay in summary form rather than offering direct quotes from the declarant or when investigator’s summary differs from statement by declarant. See *Dep’t of Environmental Protection v Giacica*, OATH Index No. 211/16 (Feb. 10, 2016), *adopted in part*, Comm’r Dec. (Mar. 28, 2016); *Dep’t of Correction v Virola*, OATH Index No. 181/18. Here, Investigator Munoz’s interview notes for both Respondent and Officer Moy state that Respondent “ordered Officer Moy to unlawfully dispose of marijuana” suggesting that each of the interviewees made exactly the same statement. However, according to Investigator Munoz’s notes, Respondent was not asked whether he ordered Officer Moy to dispose of the recovered marijuana and the notes do not contain any reference to a statement by Respondent that he ordered Officer Moy to dispose of the marijuana. Investigator Munoz initially insisted that those were Respondent’s words, but they were not reflected in her handwritten notes “for whatever reason” (Tr. 194). Investigator Munoz later explained that the interview summaries are not compilations of the interviewees’ statements, rather they are summaries that included her interpretations of interviewees’ statements (Tr. 265). Investigator Munoz also stated that Respondent did not use the word “unlawful” and that she did not know “off the top of her head” what she meant by unlawful because she did not have the Penal Code in front of her (Tr. 196). Investigator Munoz also described Respondent as “adamant” that he did not violate any Authority policy. Investigator Munoz stated that this characterization was also due to an “oversight” and that Respondent offered several denials that he did anything wrong. Investigator Munoz conceded that she “just forgot to include it in the handwritten notes.” She added that she had a “broader interpretation” of the actual statements made by Respondent during the interviews (Tr. 267).

Investigator Munoz also added information and attributed statements to Respondent that were recorded in her notes. She reported in the investigation memo that Sergeant Houston commented that he could have issued a summons. However, there was no question in Investigator Munoz's notes that prompted this statement. Investigator Munoz remarked "then that's an oversight" because she forgot to write down the question (Tr. 248). She speculated that "most likely" her supervisor asked that question and later asserted "it was a direct question" from her supervisor (Tr. 248). Investigator Munoz also claims to have asked Respondent if there was any written document stating that the NYPD does not want to process a small amount of marijuana. However, despite Investigator Munoz's testimony that every question is documented, neither this question nor Respondent's answer is reflected in her notes or memo.

It is also troubling that Petitioner is unable to determine the rationale for the revisions in the Closing Report and Referral. Investigator Munoz testified that Mr. D'Amora determined that the allegations were partially substantiated but noted that the findings were changed in the Referral. She stated that she sent the Referral to CSO Look and she believed that CSO Look "added one or two findings" but she did not know the basis for such revisions (Tr. 176). Investigator Munoz received an updated Referral and incorporated the revisions into the final version of the Referral. CSO Look denied making any revisions to the Referral.

Based on the foregoing, I find Petitioner's investigation unreliable and I do not credit the testimony of Investigator Munoz. Investigator Munoz's unexplained reliance on Officer Moy's hearsay statement, which is an uncorroborated, unsworn, self-serving statement made by a biased declarant, is insufficiently reliable to prove a central issue in this case. In contrast, Respondent credibly testified that he explained the options available to Officer Moy and did not order or advise Officer Moy to discard the marijuana. Accordingly, I do not find that Petitioner has established by a preponderance of credible evidence that Respondent ordered Officer Moy to dispose of marijuana recovered during the car stop. I therefore recommend that this charge be dismissed.

Petitioner did not present any evidence to establish that Respondent was responsible for taking law enforcement action against the driver during Officer Moy's vehicle stop. Credible evidence established that Officer Moy, as the officer initiating the car stop, had that discretion to determine the appropriate law enforcement action. In justifying Officer Moy's disposal of the marijuana, Respondent asserted that officers have discretion whether to issue a warning for violations and that in his estimation, the amount of marijuana recovered in this instance would

have warranted a violation. Conversely, Petitioner maintained that officers may not use their discretion to issue a warning to a motorist when contraband, including marijuana, is discovered. I find however that the question of whether Officer Moy was authorized in his use of discretion to issue a warning rather than a summons or effect an arrest has no bearing on whether Respondent was responsible for taking law enforcement action during Officer Moy's vehicle stop. Credible and undisputed evidence established that the officer initiating the stop was primarily responsible for determining whether to make an arrest, issue a summons or issue a warning. This charge should be dismissed.

Regarding the protocol for documenting the vehicle stop, Petitioner and Respondent produced credible testimony from witnesses with experience in this area. Credible evidence established that Respondent, as a sergeant in the Highway Unit, is not required to complete a tour report or memo book. Therefore, charges regarding his failure to complete these records should be dismissed. Respondent was required to record his activities in his activity log, which according to testimony is distinct from a memo book. Asst Chief King testified that sergeants do not have the same requirement as BTOs regarding memo books. I credit his testimony that a supervisor arriving to assist an officer during a vehicle stop is not required to provide the same level of detail in his activity log as the patrol officer making the stop would record in his memo book. Credible testimony further established that the sufficiency of activity log entries is subjective and dependent on circumstances. Respondent's activity log entry, which documented vehicle stop but did not refer to any marijuana, was not misconduct under these circumstances. Further, Petitioner did not produce evidence to establish that Respondent was responsible for submitting the vehicle inventory form pursuant to Officer Moy's vehicle stop.

### **FINDINGS AND CONCLUSIONS**

1. Petitioner did not prove that Respondent unlawfully ordered Officer Moy to dispose of marijuana recovered from a vehicle stop.
2. Petitioner did not prove that Respondent failed to take proper law enforcement action in failing to issue a summons to a driver upon the recovery of marijuana after a vehicle stop.
3. Petitioner did not prove that Respondent failed or neglected to document the recovery of marijuana pursuant to a vehicle stop on



a Supervisor's Tour Report, a Memorandum Book, or Vehicle Inventory Form.

**RECOMMENDATION**

I recommend dismissal of the charges against Respondent.

Joycelyn McGeachy-Kuls  
Administrative Law Judge

January 5, 2023

SUBMITTED TO:

**DANIEL F. DECRESCENZO, JR.**  
*President*

APPEARANCES:

**KELLIE TERESE WALKER, ESQ.**  
*Attorney for Petitioner*

**ALEX KAMINSKI, ESQ.**  
*Attorney for Respondent*

THE CITY OF NEW YORK  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

-----X  
In the Matter of

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Petitioner,

-against-

DANIEL HOUSTON,

Respondent.  
-----X

**PRESIDENT'S  
DECISION  
OATH INDEX NO.  
21/0104**

I have received and reviewed the Report and Recommendation (OATH Index No. 21/0104), dated January 5, 2023, issued by the Honorable Joycelyn McGeachy-Kuls, Administrative Law Judge (“ALJ”) of the City of New York Office of Administrative Trials and Hearings (“OATH”) with regard to the above-captioned matter.

In this matter, you were charged with unlawfully ordering a subordinate Bridge and Tunnel Office to discard marijuana confiscated during a traffic stop on October 9, 2017; failing to document the discovery and confiscation of the marijuana during the traffic stop; and failing to take proper law enforcement action in regard to the confiscated marijuana. You denied the allegations in the charges.

In the Report and Recommendation, ALJ McGeachy-Kuls concluded that the Petitioner, Triborough Bridge and Tunnel Authority (“Authority”), did not sustain its charges against Respondent by a preponderance of the credible evidence in that:

1. Petitioner did not prove that Respondent unlawfully ordered [a Bridge and Tunnel Officer] to dispose of marijuana recovered from a vehicle stop.
2. Petitioner did not prove that Respondent failed to take proper law enforcement action in failing to issue a summons to a driver upon the recovery of marijuana after a vehicle stop.
3. Petitioner did not prove that Respondent failed or neglected to document the recovery of marijuana pursuant to a vehicle stop on a Supervisor’s Tour Report, a Memorandum Book, or Vehicle Inventory Form.

Report and Recommendation at p. 16.

In reaching her findings, Judge McGeachy-Kuls evaluated the complete evidentiary record, including your testimony and the testimony of the witness called on your behalf and the

testimony of the witnesses presented on behalf of the Petitioner, as well as documentary evidence submitted by the parties.

Upon review of the record, Judge McGeachy-Kuls determined that Petitioner did not prove that Respondent engaged in the alleged misconduct and recommended that the charges be dismissed.

On January 5, 2023, OATH emailed ALJ McGeachy-Kuls' letter to the Authority and to Respondent instructing that Respondent was entitled to comment on the OATH Report and Recommendation prior to my final action and that the Authority should notify Respondent of the time period permitted for such comment. The Authority complied with that directive by letter to Respondent and Respondent's counsel, dated January 10, 2023, in which they were advised to submit any comments by the close of business on January 25, 2022.

Respondent's counsel submitted comments by letter dated January 25, 2023. In that letter, Respondent's counsel requested that "[g]iven the comprehensive hearing, the full opportunity afforded to both parties to present their case, and the well-reasoned, thorough decision by the [Administrative Law Judge], it would be inappropriate to disturb the Judge's findings."

As President of the Triborough Bridge and Tunnel Authority, I have the authority, pursuant to Civil Service Law § 75, to accept or reject the recommendation of the OATH ALJ. In rendering my decision, I have reviewed the Report and Recommendation issued by ALJ McGeachy-Kuls, the hearing transcript, and the evidentiary exhibits in this case.

I accept ALJ McGeachy-Kuls' conclusions as they were supported by the record. Accordingly, I concur with and adopt Judge McGeachy-Kuls' findings and recommendation that the charges against you should be dismissed.

Under the provisions of Section 75 of the Civil Service Law, Respondent is entitled to appeal from this determination by application either to the Civil Service Commission ("Commission") or to a court in accordance with the provisions of Article 78 of the Civil Practice Law and Rules. If Respondent elects to appeal to the Commission, such appeal must be filed in writing within twenty (20) days of Respondent's receipt of this determination. A decision of the Commission is final and conclusive.

Dated: February 28, 2023  
New York, New York.



Daniel F. DeCrescenzo, Jr.  
President, TBTA

cc: OATH  
Alex Kaminski, Counsel for Respondent (via first class mail and CMRRR)  
Daniel Houston, Respondent (via first class mail and CMRRR)  
Christina Lampropoulos, President, SOBA (via first class mail and CMRRR)