

CANANDAIGUA POLICE DEPARTMENT

21 ONTARIO STREET
CANANDAIGUA, NEW YORK 14424
(716)396-5035 Phone
(716)396-5034 Fax
Dial 911 for All Emergencies

Patrick W. McCarthy
Chief of Police



February 23, 2001

TO: P.O. Craig S. Cummings
FROM: Chief Patrick W. McCarthy
SUBJECT: Internal Affairs Investigation #1 (S-01)

After reviewing the contents of the February 21st conference in my office concerning your involvement and intervention in the reduction of a traffic ticket issued by another member of the Department, the following is for your information.

Synopsis: You made a request to the District Attorney to reduce a traffic ticket issued by Police Officer Daniel Ball charging a seat belt violation to a dismissal by contacting A.D.A. William Hart and lying to him. The defendant in this action, [REDACTED] is a known drug and alcohol abuser, has been convicted of same, has ownership interests in The Ale House bar where numerous police incidents have occurred and underage drinking has been known to occur. The defendant in this case has a record of being uncooperative with the police on numerous occasions including an incident resulting in his arrest on a "Resisting Arrest" charge.

Finding: Violation of Article III - Rules of Conduct as follows:

3-2 Unbecoming Conduct - Officer Cummings failed to conduct himself in such a manner as to reflect favorably on the Department and further brought disrepute and discredit upon the Department by making untruthful statements to a member of the District Attorney's Office.

3-28 Associations - [REDACTED] has a reputation with the Police Department of criminal behavior, drug use, serving alcohol to minors and resisting and uncooperative behavior in past incidents with the police. Officer Cummings, an eight year veteran of the Canandaigua Police Department, assigned to the Patrol Division is or should be aware of these facts. Regardless of the "cousin" relationship, Officer Cummings exercised extremely poor judgement in involving himself in an official capacity with an individual of poor reputation in the community.

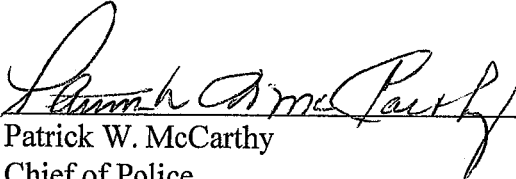
3-46 Truthfulness - Officer Cummings was untruthful to Lt. Wittenberg when questioned about his involvement in the ticket reduction. He was also untruthful in his conversation with A.D.A. Hart regarding City Attorney Scott Smith's acceptance of plea bargaining arrangements for seat belt violations.

In view of the foregoing, the Department intends to proceed with formal disciplinary action against you. In connection with these charges, the following is submitted for your consideration:

In the event you wish to waive your right to a hearing in the aforementioned violations of the Department's Rules of Conduct, as per provisions of Article 75 of the New York State Civil Service Law, you will be subject to an eight-day suspension, a formal letter of reprimand and a warning letter that will advise you that any future serious violations of the Department's Rules of Conduct or procedures will be cause to dismiss you from the Department. Should you prefer a hearing on these violations of Rules of Conduct, you may feel free to do so.

Upon receipt of this communication, you may have five (5) business days to decide which alternative you wish to take. If no response is received, the Department will proceed with arrangements for an Article 75 Hearing.

PWMcC:cb
xc: Stephen Cole, City Mgr.


Patrick W. McCarthy
Chief of Police

I hereby accept the alternative discipline offered in this memorandum, and I waive my rights to a Civil Service Law Section 75 Hearing.

2-27-01
Date


Craig S. Cummings

CANANDAIGUA POLICE DEPARTMENT

21 ONTARIO STREET
CANANDAIGUA, NEW YORK 14424

SPECIAL SERVICES DIVISION
DETECTIVE UNIT

PATRICK W. McCARTHY
CHIEF OF POLICE

January 31, 2001

I.A. 001-01

C-720-01

Internal Affairs Investigation – Intervention in the Reduction of a Traffic Ticket
Issued by Another Member of the Department

Complainant – Assistant District Attorney William Hart

Accused – Craig Cummings, Badge 112, Hire Date 08-23-93

Charges: 3-46 Truthfulness
3-28 Associations
3-2 Unbecoming Conduct

Synopsis: Ofc. Cummings engaged himself in a request of the District Attorney's Office to reduce a traffic ticket issued by Ofc. Dan Ball from a seat belt violation to a dismissal by contacting ADA William Hart and lying to him. The defendant in this action, [REDACTED] is a known drug and alcohol user, and has been convicted of same, owns the Ale House Bar where numerous police complaints are handled and underage drinking has been known to occur, and the defendant has been uncooperative with the police on several occasions and once resisted arrest by members of this department.

Evidence: Memo of January 31, 2001 by Sgt. Charles Bardeen
Canandaigua Police Arrest Synopsis
Arrest Report #702319 of [REDACTED]

Investigation:

Interview of Ofc. Daniel Ball, Badge 119

On February 1, 2001, I interviewed P.O. Ball. Ball was familiar with the incident that I was investigating. He stated that during a directed patrol effort to enforce seat belt violations in the fall of 2000, he happened to issue a traffic ticket for no seat belt to [REDACTED]. Towards the end of November, 2000, Dan

stated that he was approached by P.O. Cummings in the locker room of the police department when Cummings brought up the issuance of the ticket to Ball. Cummings told Ball that he had told ██████ that he would see what he could do to reduce the ticket. Cummings further stated to Ball that he either was, or already had, contacted Scott Smith to discuss the reduction. Cummings told Ball that he, "wanted to come through for him (█████)". Ball stated "No way!" and continued to say that ██████ was a "coke head" and that we (the department) had to "rock and rock" (fight) with ██████ at the Ale House a few years ago. That seemed to end the conversation.

Sometime in early December, ADA William Hart and Ball engaged in a conversation when this ticket came up. Ball told Hart that if Cummings was looking to get ██████ a break, Ball told Hart to not do this because ██████ was a "crack head."

A week or two later, Ball, Hart and Cummings are all in court. Cummings is talking to Hart. When Ball returns to the conversation, Cummings had walked away. Hart stated to Ball that Cummings had just told him that he (Ball) had agreed to a reduction in the ██████ case. Ball told Hart that Cummings' statement was not true. Ball approached Cummings and asked him "What are you doing?" and Cummings left without a response to Ball's question.

Interview of Assistant District Attorney William Hart

ADA Hart advised me that he received a voice mail message from P.O. Cummings sometime late last year. On the message was Cummings stating to Hart that he had talked to Scott Smith, City Corporate Counsel, in regard to the ██████ ticket, but Smith said that he had a conflict of interest in the case and that Hart would be prosecuting. Cummings told Hart that he was requesting a reduction of this ticket and that Smith usually offers an "Adjournment in Contemplation of Dismissal" in these cases. Cummings further stated that the arresting officer (Ball) has agreed to this reduction. Sometime later, ADA Hart discussed this case with Ball and learned that Ball was not in agreement with this reduction and that Cummings statement to Hart was misleading and untrue.

On January 17, 2001, the ██████ seat belt ticket came before the Court. ██████ advised the Judge that he was advised that his ticket was to be adorned in contemplation of Dismissal. ██████ continued by stated that P.O. Cummings advised him that it would be because the arresting officer (Ball) was in agreement. The Judge asked Hart if he agreed to this reduction and Hart responded that the arresting officer made no such agreement and requested no reduction. ██████ plead guilty as charged.

Interview of P.O. Craig Cummings, Badge #112

On February 8, 2001 at 1200 noon, I interviewed Craig Cummings in regard to this complaint. I taped recorded the interview in which Cummings acknowledged knowing the interview was being taped. He also stated on tape that he declined union representation on this issue.

I advised him of the complaint and made it clear to him that this investigation was not in regard to contacts with the District Attorney's Office to reduce a ticket, but it was in regard to how the request was made and what the District Attorney's Office was advised.

P.O. Cummings' acknowledged knowing ██████████ and stated that ██████████ was his cousin. Cummings was aware that ██████████ received a seat belt ticket from P.O. Ball sometime in the fall of 2000 and that ██████████ talked to him about it. Cummings said that he initiated a conversation with P.O. Ball, the issuer of the ticket. Cummings told Ball that he had talked to City Attorney Scott Smith and that he was "OK" with a reduction of the ticket to an adjournment in contemplation of dismissal, but couldn't involve himself due to a conflict of interest. Smith advised Cummings to talk to both the officer who wrote the ticket and William Hart. Cummings talked to Ball in the locker room of the Police Department and at that time Ball, "Didn't have a problem with it." Cummings when on to say that it was "locker room talk" and he (Ball) didn't have a problem with it then.

Cummings said that he didn't know exactly what happened, but something happened later on that Cummings learned that Ball no longer agreed to this reduction so Cummings asked Ball again, one day at City Court. Cummings said that Ball, again, said he had no problem with it, but he said that he had hear "scuttlebutt" that ██████████ was back into drugs and alcohol and that he didn't want to do it. Cummings said that he didn't know about the drugs and alcohol and said that it was ██████████ "personal business." Ball then stated to Cummings's, "Well, OK, I don't have a problem with it and I'll talk to Bill (Hart) about it."

I asked Cummings if he had talked to Hart about the reduction and he said that he had left a message on Hart's answering machine stating something to the effect of, that he had talked to Scott Smith about this and Smith had been offering "ACD's" to anybody who was showing up to court to answer seat belt tickets and that he (Smith) would have no problem if this was offered to ██████████. Cummings continued on the machine stating that Smith could not handle the case, but this was Smith's recommendation to Hart, but Hart didn't have to agree with this reduction.

I asked Cummings if he was aware of any arrests of [REDACTED]. Cummings responded that he was sure he had been arrested in the past. I asked if he was aware that [REDACTED] had been arrested for drug charges and he responded that he knew [REDACTED] had a "drug past." I asked if he was aware that [REDACTED] was arrested for resisting arrest by our Department and Cummings stated that he did not know this.

I offered Cummings a final statement. Cummings told me that he knew [REDACTED] was trying to "clean himself up" and that [REDACTED] had always been good to him. He's a family relative and what [REDACTED] does on his personal time, as long as it doesn't affect him, and his career, because he (Cummings) has a job to do. (Broken sentence by Cummings) Cummings continued stating that he told [REDACTED] what was told to him and rescheduled the appearance date because the original date was a Saturday.

Interview of City Corporate Counsel Scott Smith

On February 14, 2001 I interviewed Scott Smith by telephone. I asked Smith if he recalled P.O. Cummings contacting him in regard to a seat belt ticket issued to [REDACTED]. Smith did recall speaking with Cummings and advised Cummings that he would not be prosecuting the case due to a conflict of interest. I asked Smith if he told Cummings that he would not have an objection for a reduction of the ticket. Smith said that he did not say anything to that effect. Smith said that because it was a conflict of interest, he could not make any recommendation in this case. I then played a portion of Cummings' taped interview over the telephone to Smith. The portion played was Cummings statement in paragraph 5, of Cummings interview, concerning the message that Cummings left on Hart's answering machine. After Smith heard Cummings testimony, Smith stated simply that Cummings statements to Hart were untrue. Smith does not offer "ACD's" to seat belt violators just because they show up in court. On the contrary, Smith do not offer any reduction in seat belt tickets because there is no increase in insurance and based on the lack of severity of the violation, there is essentially nothing to reduce it to. Smith can remember only one time he reduced a seat belt ticket to an "ACD." He recalled an 85-year-old man that was emphatic about having his seat belt on. Smith felt somewhat sorry for the man's troubles and felt, due to the circumstances, an "ACD" would be in the best interest of everyone. But that was it.

Conclusion:

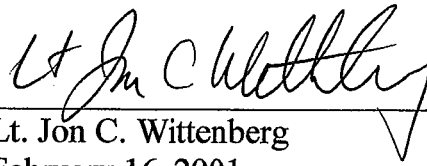
Officer Cummings contends that he was attempting to help a family member receive a reduction of a ticket issued by this Department and testifies that he received permission from the issuing officer, discussed the case with the City Corporate Counsel and received his authorization, and finally advised the prosecutor of the case that all parties to the action were in agreement to reduce a seat belt ticket to a virtual dismissal. P.O. Craig Cummings lied. Cummings lied to Assistant District Attorney Bill Hart in regard to Ball's wishes in the case which brought discredit to Ball; Cummings lied about the City Attorney's methods of handling cases in City Court to ADA Hart, which brought discredit to the City Attorney, and Cummings' lied to this investigator which have been passed on to the District Attorney's Office and the City Corporate Counsel by the necessity of this investigation which has brought discredit to the Department. Furthermore, Cummings' association with his "cousin", a family member that he tried to help out, is apparently so strong that he was compelled to obtain a reduction in a seat belt ticket to a dismissal. However, this relationship is not strong enough for him to know that the Police Department which Cummings' is a member of, fought with his "cousin", using physical force to subdue [REDACTED] and then, have his "cousin" refuse to answer basic identity questions when asked by members of the Department during this arrest of a couple of years ago. Although the reason that Cummings intervened in this traffic ticket to the extent that he did will not be determined truthfully by this investigation, the fact remains that he did intervene and he did so deceitfully and without regard to the image and integrity of the Department he represents.

Findings:

- 3-46 Truthfulness – **Sustained** – Officer Craig Cummings lied to Lt. Jon Wittenberg when questioned about his involvement in this ticket reduction and lied to Assistant District Attorney William Hart as to Scott Smith's actions in these cases in City Court and lied about Officer Ball's wishes in regard to the reduction.
- 3-28 Associations – **Sustained** – [REDACTED] has a reputation with the Police Department of criminal behavior, drug use, serving alcohol to minors, and fighting with police. Officer Cummings should know this after eight and one half years assigned to the Patrol Division and a relative of [REDACTED]. The fact that [REDACTED] is Cummings' cousin is not a factor in this case, even though this rule exemplifies officer's contacts for reasons that are "unavoidable because of other personal

Relationships.” Cummings used poor judgment in his efforts to reduce a simple traffic ticket to a dismissal for a person of this character, “cousin” or not.

- 3-2 Unbecoming Conduct – **Sustained** – Officer Cummings failed to conduct himself in such a matter to reflect favorable on the Department and further brought disrepute and discredit upon the Department by lying to the District Attorney’s Office



Lt. Jon C. Wittenberg
February 16, 2001

INSTRUCTIONS TO ADDRESSEE

- 1. Write Reply at Bottom.
- 2. Return White Copy and Retain Yellow Copy.
- 3. Use Fold Marks on Right Edge of Form for Window Envelope

INSTRUCTIONS TO ORIGINATOR

- 1. Detach Pink Copy
- 2. Send White and Yellow Parts to Person Addressed.
- 3. Use Fold Mark on Left Edge of Form for Window Envelope

From

POLICE DEPARTMENT

City of Canandaigua
 21 Ontario Street
 Canandaigua, New York 14424
 (716) 394-3311 & 396-5035

PLEASE RETURN THIS
 MESSAGE REPLY
 TO



To

Lt. Wittenberg

DATE
January 31, 2001
SUBJECT

Message

Please be advised that on January 17, 2001(Wed) I was assigned as the court security Officer in Canandaigua City Court. During the Court calender, Judge Aronson called defendant [REDACTED] who was charged with "Driving with no seat belt." [REDACTED] advised the judge that he had been advised that his ticket would be "A.C.D" The Judge then asked A.D.A. Hart if he was aware of this arrangement. Mr. Hart stated that he was contacted by P.O. Cummings who was requesting [REDACTED] traffic ticket be A.C.D'd and that he(P.O. Cummings) had already spoken with the arresting officer and he was comfortable with this request. Mr. Hart further stated that after speaking with P.O. Cummings he subsequently spoke with the arresting officer (Ball) and P.O. Ball advised Mr. Hart that he has had no conversations with P.O. Cummings concerning the ticket he issued to [REDACTED] and that he wanted no reductions given to [REDACTED] subsequently plead guilty as charged.

Respectfully Submitted,
Charles Bardeen
 Sgt. Charles Bardeen

Signed

Reply

DATE _____

Signed

ORIGINATOR FOLD MARKS

ADDRESSEE FOLD MARKS

CANANDAIGUA POLICE DEPARTMENT

PERSONNEL COMPLAINT REPORT

CPD # C-720-01

I.A.# 001-01

Date /Time 1-31-01

Manner Complaint Received: In person Letter Telephone

Location of Occurrence: City Court Date/Time Occurred: December, 2000

Employees: 1. Craig Cummings 2. _____ 3. _____
Involved

CODE: C = Complainant W = Witness O = Other

Code: C Name: William Hart / Police Dept Sex: _____ D.O.B.: _____

Address: Asst. District Attorney City: Edgmont State: _____ Phone: _____

Complaint: (if additional space is necessary use CPD# _____
Supplementary Report)

ADA William Hart reported that he received a request from
Ofc. Craig Cummings to "A.C.D." a seat belt ticket issued by
P.O. Ball in the Fall of 2000. Cummings told Hart that
he had discussed this reduction with Ball and he agreed
to it. This statement was not true.

NOTICE: PURSUANT TO THE NEW YORK STATE PENAL LAW SECTION 210.45, IT IS A CRIME PUNISHABLE AS A CLASS A MISDEMEANOR TO KNOWINGLY MAKE A FALSE STATEMENT HEREIN.

Complainant

Print Name: _____

Signature: _____

Supervisor

Signature: [Signature]

Employee Notified Date: 2-8-01