



POLICE DEPARTMENT

May 23, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Omar Habib  
Tax Registry No. 942899  
40 Precinct  
Disciplinary Case Nos. 2010-2466 & 2011-5446

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The above-named member of the Department appeared before me on January 8, 2013, and March 1, 2013, charged with the following:

Disciplinary Case No. 2010-2466

1. Said Police Officer Omar Habib, assigned to the 40th Precinct, while on duty, at about 2145 hours on September 18, 2009, at the 40th Precinct stationhouse, Bronx County, did use unnecessary physical force against Person A in that he punched Person A in the face without police necessity.

P.G. 203-11 FORCE

Disciplinary Case No. 2011-5446

1. Said Police Officer Omar Habib, while assigned to the 40th Precinct, on or about and between January 26, 2010, and July 26, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on two (2) occasions requested assistance with, or assisted in, the prevention of the processing and adjudication of two (2) summonses issued to two (2) motorists. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by David Bernstein, Esq., and Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty to the charge in Disciplinary Case No. 2011-5446 and entered a plea of Not Guilty to the charge in Disciplinary Case No. 2010-2466.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

#### DECISION

##### Disciplinary Case No. 2010-2466

Respondent is found Guilty.

##### Disciplinary Case No. 2011-5446

Respondent, having pleaded guilty, is found Guilty.

#### SUMMARY OF EVIDENCE PRESENTED

##### The Department's Case

The Department called Sergeant Yon Chang, Police Officer Cedric Dixon and Captain David Perez as witnesses and offered in evidence an out-of-court statement made by Person A.



Sergeant Yon Chang

Chang, a 19-year member of the Department who is currently assigned to the 17 Precinct, recalled that he was assigned to the 40 Precinct from December 2006 to December 2010. On September 18, 2009, Chang was on duty assigned as the desk officer. His duties included visually examining the physical condition of prisoners that were brought into the stationhouse and logging their condition and their pedigree information into the command log.

Chang identified an entry he made in the 40 Precinct command log for September 18, 2009 [Department's Exhibit (DX) 3] regarding a prisoner named Person A who had been arrested by Respondent. Chang confirmed that on the line "Physical/Mental Condition," he wrote "A/N" which is an abbreviation for "apparently normal." Chang testified that he made this notation based on his personal observation of the prisoner because he always looks at a prisoner's face and any other visible body areas in order to ensure that the prisoner is not injured and does not need medical attention. Chang explained that one of the purposes of documenting in the command log whether a prisoner entering the stationhouse has any visible injuries is to protect the Department in case the prisoner later falsely claims that he was injured while he was in custody inside the stationhouse.

Chang was shown the Mugshot Pedigree photographs of Person A that were taken on September 18, 2009 (DX 2). [These photos depict a dark bruise under his right eye.] Chang testified that he did not see this bruise when Person A was presented by Respondent at the front desk on September 18, 2009, and that if he had observed such a facial injury he would have made a notation in the 40 Precinct command log on the

physical/mental condition line that the prisoner had a black eye and he might have asked the prisoner if he needed medical attention.

Chang testified that after prisoner processing is completed at the front desk, Chang would then order the arresting officer to take the prisoner to the holding cell. If the prisoner needed to go to the bathroom right away, the prisoner would be brought from the front desk straight to the prisoner bathroom. If the prisoner was to be strip searched, Chang would notate in the margin column of the command log that a strip search was authorized. Chang confirmed that in the command log entry regarding Person A, there is no strip search authorization notation.

Chang identified a photograph as accurately depicting the prisoner bathroom at the 40 Precinct with the door open along with the two double doors that separate the desk area from the muster room area (DX 4A). Chang identified another photograph as accurately depicting the prisoner bathroom from the vantage point of someone standing just outside the bathroom (DX 4B).

On cross-examination, Chang agreed that he does not have any present recollection of seeing Person A on September 18, 2009. Chang also agreed that he did not make any entry that Person A had complained that he had been hit by an officer. Chang confirmed that the male holding area of the 40 Precinct could contain as many as 25 prisoners on a busy night. Chang acknowledged that he received no complaints on September 18, 2009 from any prisoner alleging that he had had been struck by an officer. Had Person A made such a complaint, Chang would have followed proper procedure, which would have included notifying the Internal Affairs Bureau and making a notation about the complaint in the command log. Chang also agreed that when a prisoner is



removed from the 40 Precinct holding cell to be transported to Central Booking, the prisoner is presented at the front desk before he is escorted out of the stationhouse. The desk officer is supposed to make another physical observation of the prisoner and if the desk officer observes an injury to the prisoner that was not observed when the prisoner entered the stationhouse, the desk officer is supposed to make a notation in the command log regarding the injury.

On redirect examination, Chang agreed that after a prisoner is brought through the double doors to the muster room, the desk officer would most likely not see or hear the prisoner again until the prisoner was removed from the holding cell to be transported to Central Booking. Chang confirmed that the 40 Precinct command log for September 18, 2009 shows that ten minutes after Person A was brought into the stationhouse, Chang was no longer serving as the desk officer because he was post-changed to administrative duties. Chang confirmed that the 40 Precinct command log indicated that Person A was transported straight from 40 Precinct to Lincoln Hospital by Emergency Medical Service (EMS).

Police Officer Cedric Dixon

Dixon, a 16-year member of the Department who is assigned to the 40 Precinct, recalled that on September 18, 2009, he was on duty, partnered with Respondent in a marked Radio Motor Patrol car (RMP). Dixon recalled that he and Respondent were traveling northbound on Jackson Avenue toward 152 Street when Dixon observed a male, whose name he later learned was Person A, drinking from an open can of beer on the street. They pulled over to approach Person A, and told him to come over to the RMP.

Person A would not comply, so they got out of the RMP and requested to see ID.

Person A became belligerent and started cursing at Dixon and Respondent.

Person A finally handed over an ID. After they transmitted his pedigree information over their radio, they were informed that Person A had an open warrant. When they informed Person A that he was wanted on a warrant and that they were going to arrest him, Person A cursed at them and started to walk away. Dixon reached out and pulled him back toward them. Person A swung a portable radio at Dixon and Person A started flailing his arms, stated that he was not going with them, and continued to curse at them. Dixon and Respondent put Person A up against the RMP and handcuffed him and searched him. Dixon testified that nothing struck Person A on his face.

As they transported Person A in the RMP to the 40 Precinct, he was yelling and screaming at Respondent who yelled back at him. Dixon told both of them to calm down. Upon arrival at the stationhouse, Person A was brought inside and presented at the front desk. They explained to the desk officer what had transpired. Person A was still yelling that "this was stupid, over a beer." At one point, Respondent took Person A to the bathroom, located in the back of the Muster Room area. Dixon remained by the front desk. Dixon could not see the bathroom from the front desk area.

After a few minutes, Dixon walked back to the bathroom to make sure Respondent was okay. The door to the bathroom was closed. When Dixon entered the bathroom, he saw that there had been a struggle. Dixon asked Respondent if he was okay and Respondent said that he was okay. Dixon recalled that Person A was yelling "get off of me." Person A and Respondent were face-to-face. Person A was in handcuffs. Dixon told Person A whatever had happened in the street was over, that they were going to



process him, and that would be the end of it. After Person A was placed in the holding cell, Dixon and Respondent resumed patrol.

Dixon testified that he never saw any injury to Person A's face. Dixon was shown the Mugshot Pedigree photographs (DX 2) which depict a dark bruise under Person A's right eye. Dixon asserted that he never saw this bruise on Person A's face.

On cross-examination, Dixon confirmed that when a prisoner was acting obnoxious or violent, the search of the prisoner for contraband, weapons, or drugs would be conducted in the back, not at the front desk. Dixon also confirmed that since Respondent was the arresting officer, it was his responsibility to conduct the search of Person A and to place him in the holding cell. Dixon could not recall what Respondent had said to Person A inside the RMP. Dixon agreed that Respondent's action of taking Person A to the back was not out of the ordinary and the desk officer did not tell Respondent to bring Person A back to the desk. When he entered the bathroom, Dixon did not observe any injuries on Person A and Person A did not complain to Dixon that he had been struck by Respondent. Person A just continued being belligerent by yelling, cursing, and screaming.

Captain David Perez

Perez, a 22-year member of the Department who is currently assigned to Police Service Area 6, testified that he held the rank of lieutenant when he was a supervisor at the 40 Precinct from April 2008 to January 2013. On September 18, 2009, Perez was assigned as the desk officer. At 11:25 p.m., when he conducted a holding cell inspection, Perez asked the prisoners inside the holding cell if they had any questions or complaints.

Person A, who was sitting near a wall in the cell, said nothing and did not appear to have any injuries. Perez inspected the prisoners in the cells again at about midnight. Person A had his hood up and he was sleeping. At 4:30 a.m., the prisoners were brought to the front desk to be transported to Central Booking. Perez observed that Person A had a black eye. Perez took Person A to the side and asked him what had happened. Person A stated that he had been hit in the face but he did not say who had hit him. When Perez again asked him how he had gotten the black eye, Person A said, "The cops hit me."

Perez directed that EMS be called. EMS arrived and Person A was transported to Lincoln Hospital. Perez notified the Internal Affairs Bureau about Person A's allegation. Perez ascertained that Respondent was the arresting officer and that Respondent had not signed out yet. Perez sought out Respondent and asked him about the arrest. Respondent explained that Person A had resisted arrest.

Perez testified that when he initially observed Person A inside the cell at 11:25 p.m., he did not observe the black eye he saw at 4:30 a.m. Based on his personal experience regarding bruising, Perez testified that it could take several hours for the facial region around the bottom of an eye to display bruising after that area has experienced trauma.

Perez testified that if a prisoner is brought into the bathroom so that a more thorough search can be conducted, the proper procedure is that the bathroom door be left open. Perez testified that it would not be proper procedure for an officer to escort a belligerent prisoner into the bathroom, close the door behind them, and then conduct a more thorough search.



On cross-examination, Perez agreed that not only could it take several hours for a facial bruise to develop after a punch to the face, it could take up to a day. Perez confirmed that Respondent had only told him that Person A had resisted arrest. Respondent did not tell him that he had hit Person A. Perez did not speak to Dixon. Perez confirmed that there have been altercations inside cells between prisoners in which prisoners have been injured by one another. Perez testified that when he asked Person A how he had gotten the black eye, Person A's exact reply was, "The cops hit me when I was arrested." Perez did not ask any follow-up questions. He ordered that Person A be taken back to the cells and that EMS be called. Person A never said that he was punched while he was in the bathroom, or that the white officer had punched him or that the Hispanic officer had punched him.

Perez agreed that because a desk officer has numerous duties he was not looking at the monitors the entire time he was at the desk. Perez also agreed that because the cell monitors are located to the side of the desk, Perez had to turn his head away from the desk to be able to view the monitors.

On redirect examination, Perez testified that he did not observe anything unusual occurring inside the holding cells when he viewed the visual monitors focused on the cells. There were no fights and everyone was calm. Perez confirmed that a cell attendant was on duty that evening. The cell attendant is stationed right outside the cells to monitor the prisoners' actions. If an argument developed between prisoners, the cell attendant is required to notify the desk officer. On that tour, the cell attendant did not notify Perez about any fight between prisoners in the cells.

Person A

Person A was interviewed at the Civilian Complaint Review Board (CCRB) on September 25, 2009 (DX 5). Person A stated that he was born on December 15, 1968 and that he resided in the Bronx. Person A recalled that after Respondent and Dixon stopped him on the street because he was carrying two empty cans, they told him that he had two warrants and that they were taking him into custody. Person A explained that he then “got so hyper” because he suffers from “schizophrenia.”

After Respondent and Dixon transported Person A in their RMP to the 40 Precinct, he was brought inside and presented at the front desk. Person A stated that then instead of taking him to a cell, Respondent took him into a bathroom. When Person A asked Respondent why he was taking him into a bathroom, Respondent began “threatening” him and tightened his handcuffs. Person A stated that he became upset and asked him, “What the hell are you doing? Why are you doing this to me?” Person A “was getting mad at him” because the tightened handcuffs were bruising his wrists. Respondent then “started punching me in my chest.” Respondent then “came and boom, and he hit me in the eye.” Person A stated that he asked Respondent, “Why are you doing this?” and told him that police officers “aren’t supposed to do this.” He was then taken into “the bullpen.” Later, a sergeant asked him, “What happened to your eye?” He told the sergeant “one of the officers he hit me in the eye.” Person A was transported to a hospital where he told a doctor that a police officer had hit him in the eye.

The Department offered in evidence medical records regarding Person A’s treatment at Lincoln Hospital (DX 1) [Person A stated that he was “punched in the face by the officer” while “in the bathroom.” “Edema/Ecchymosis below R eye” was noted.]



Respondent's Case

Respondent testified in his own behalf.

Respondent

With regard to Disciplinary Case No. 2010-2466, Respondent testified in a manner consistent with Dixon regarding stopping Person A for drinking alcohol in public view on the street. When Respondent asked Person A for ID so that he could issue him a summons, Person A started cursing and threatened Respondent and Dixon with physical harm. Person A was loud and agitated and appeared to be under the influence.

After Respondent determined that Person A had an open warrant, he was told that they were going to place him under arrest. Person A continued cursing and tried to walk away. Dixon walked over to try to grab him. Person A started swinging a portable boom box radio at Dixon but he never made contact with Dixon. When Person A started to flail his arms, Respondent and Dixon grabbed his arms, put him up against their RMP, and handcuffed him. Person A resisted being placed into the RMP. Inside the RMP, Person A started cursing and kicked the door. Respondent tried to calm Person A down so that Dixon could drive safely to the 40 Precinct.

When they arrived at the 40 Precinct, Respondent and Dixon brought Person A straight to the front desk. There, Person A continued his belligerent behavior. Respondent tried to frisk Person A, but Person A was too belligerent. Respondent then took Person A to the bathroom to do a further pat down to make sure that he was not in possession of any contraband. When Respondent unhandcuffed Person A, he started flailing his arms and threatened to hurt Respondent. Respondent took a step back and

tried to calm Person A down. Respondent told Person A that he was going to place him under arrest, and proceeded to handcuff him again.

At that point, Dixon came in to see if everything was okay. Respondent explained to Dixon that Person A was under arrest. Person A never hit Respondent, but he was charging at Respondent and continued to be belligerent. Person A started to curse at Dixon. Dixon explained that if Person A complied, they would be gentle with him and get him through the system as quickly as possible. Eventually, Person A started to calm down. Respondent and Dixon brought Person A to the cell area. Person A complied from that point on and gave them his property. They placed him in a holding cell without incident. Respondent had no further contact with Person A after that. Respondent testified that he never struck Person A inside or outside of the bathroom. Later, Perez asked Respondent what offense Person A was being arrested for. Respondent explained that he was under arrest for resisting arrest. Perez then told Respondent to standby.

With regard to Disciplinary Case No. 2011-5446, Respondent acknowledged that on January 26, 2010, he received a telephone call from a union delegate who asked him to prevent the adjudication of a moving violation summons that Respondent had issued to a motorist in November, 2009. The delegate requested that when he was called to testify about the summons at the Bronx Traffic Violations Bureau (TVB), "Just say you don't recall." Respondent admitted that he complied with this request. When he was asked about the summons at TVB he stated that he did not recall the incident. Respondent also acknowledged that on March 9, 2010, he telephoned the 40 Precinct union delegate and asked him if he "could help out" with a ticket that had been issued to his cousin by marriage. However, the union delegate informed him that the ticket had already been



processed, that nothing could be done about it and that his cousin had to go to TVB to contest the ticket.

On cross-examination, Respondent was shown the Mugshot Pedigree photographs of Person A that were taken on September 18, 2009 (DX 2) which depict a dark mark under Person A's right eye. Respondent testified that when he approached Person A on the street and first observed his face, he "didn't notice" any mark under Person A's right eye. Respondent confirmed that when he was shown these same Mugshot Pedigree photographs of Person A at his CCRB interview and that he told his CCRB interviewer, "That's how he looked to me since we seen him in the street...that's how he always looked, like that." Respondent then adopted his prior statement and testified that when he first encountered Person A on the street, he saw that Person A had a mark underneath his eye. Respondent agreed that he had yelled back at Person A inside the RMP and that Dixon had told both of them to calm down.

#### FINDINGS AND ANALYSIS

##### Disciplinary Case No. 2011-5446

Respondent, having pleaded Guilty, is found Guilty.

##### Disciplinary Case No. 2010-2466

It is charged that on September 18, 2009, at the 40th Precinct stationhouse, Respondent used unnecessary physical force against Person A in that he punched him in the face without police necessity.

Person A's statement at his CCRB interview that he was punched in the face by Respondent inside a bathroom at the 40 Precinct (DX 5), which was offered as hearsay evidence at this trial, is consistent with what he told medical personnel at Lincoln Hospital where a doctor observed a bruise below his right eye (DX 1). This bruise, which is depicted in the Mugshot Pedigree photographs of Person A (DX 2), is consistent with a close-fisted punch. Nonetheless, if this was the only evidence that the Department had offered at this trial, I would find Respondent not guilty because Person A's statement that Respondent was supposed to take him straight to "the bullpen" shows that he has been arrested before; because Person A was upset that Respondent and Dixon had stopped him merely because he was carrying beer cans; and because Person A admitted that he suffers from schizophrenia. However, the Department presented three members of the service, Chang, Dixon and Perez, who offered credible testimony which, taken together, establishes that Respondent caused the bruise to Person A's face.

Chang, who was serving as the desk officer when Respondent brought Person A into the 40 Precinct, entered in the command log that Person A's physical condition was "A/N" meaning apparently normal (DX 3). I credit Chang's testimony that if he had observed the bruise under Person A's right eye that is depicted in the photographs of Person A (DX 2) he would have noted in the command log that Person A had a black eye. Thus, Chang's testimony contradicts Respondent's claim at his CCRB interview that he had noticed that Person A already had a bruise under his eye when he arrested Person A.

Person A's claim that Respondent punched him inside a bathroom in the 40 Precinct is also supported by Dixon's testimony that Respondent and Person A were screaming at each other so vehemently inside the RMP on the way to the 40 Precinct that



he had to tell both of them to calm down and that Person A was still yelling at the front desk just before Respondent took Person A to the bathroom. Most significantly, Dixon recalled that when he went to the bathroom, the door, which should have been open, was closed and that when Dixon opened it he saw that there had been a struggle and he heard Person A yelling, "Get off of me!"

Finally, the testimony of Perez establishes that Person A was inside a holding cell from the time Respondent brought him out of the bathroom and placed him in the cell until Person A was brought out of the cell to be transported to Central Booking, at which point Perez observed that Person A had a black eye and arranged for him to be transported to Lincoln Hospital. Although Respondent's counsel raised the possibility that Person A could have been hit in the eye by a cellmate, this speculative argument has no support in the record. On the contrary, Perez testified that both he and a cell attendant were monitoring the prisoners and that no altercations took place inside the holding cells during the period when Person A was lodged there.

I do not credit Respondent's testimony because he has offered inconsistent versions as to whether he saw the bruise under Person A's eye which is depicted in the Mugshot Pedigree photographs of Person A when he encountered Person A on the street. Respondent flip-flopped in his trial testimony regarding this matter. He initially asserted that he did not notice any mark under Person A's eye when he approached Person A on the street. But after he was confronted with statements he made at his CCRB interview, he changed his testimony and asserted that when he first encountered Person A on the street he saw that Person A had a mark underneath his eye.

Respondent is found Guilty.

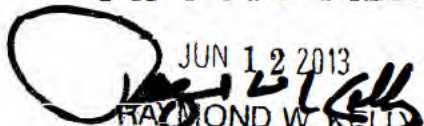
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

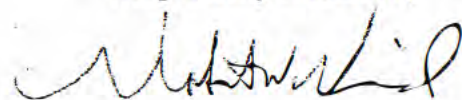
Respondent has pleaded Guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by, on two occasions, requesting assistance with, or assisting in, the prevention of the processing and adjudication of two summonses issued to two motorists. The Assistant Department Advocate (the Advocate) recommended that Respondent be suspended for five days, that he forfeit 25 vacation days, and that he serve one year on dismissal probation. This penalty is consistent with the penalties that have been imposed on other MOS who have pleaded Guilty to this charge. Respondent has been found Guilty of using unnecessary physical force against a prisoner by punching him in the face without police necessity. The Advocate recommended with regard to this misconduct that Respondent forfeit ten vacation days.

Therefore, it is recommended that Respondent be suspended for five days, that he forfeit 35 vacation days, and that he serve one year on dismissal probation.

**APPROVED**

JUN 12 2013  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

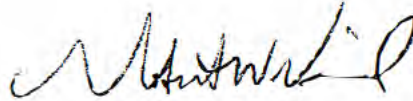


POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER OMAR HABIB  
TAX REGISTRY NO. 942899  
DISCIPLINARY CASE NOS. 2010-2466 & 2011-5446

Respondent received an overall rating of 4.0 on his 2012 performance evaluation, 3.0 on his 2011 evaluation, and 3.5 on his 2009 evaluation. He has no medals. [REDACTED]  
[REDACTED] He has no prior disciplinary record and he has no monitoring records.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials