The City of New York

POLICE DEPARTMENT

November 15, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Naetron King
Tax Registry No. 943441
Police Service Area 6 / Viper 1
Disciplinary Case No. 2009-1098

The above-named member of the Department appeared before the Court on July 10 and 20, 2012, charged with the following:

1. Said Probationary Police Officer Naetron King, while assigned to the 46th Precinct, on or about October 21, 2007, while on duty, having been assigned the arrest of an individual, known to the Department, for Driving While Intoxicated, within the confines of the 46th Precinct, Bronx County, wrongfully and without just cause did fail to make accurate entries in Department records, in that said Probationary Police Officer falsely represented on an Arrest Report that he had observed said arrested individual operating a swerving vehicle westbound on 183rd Street, when, in fact, said Probationary Police Officer had not.

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY GENERAL
GENERAL REGULATIONS

2. Said Probationary Police Officer Naetron King, while assigned to the 46th Precinct, on or about October 21, 2007, while on duty, having been assigned the arrest of an individual, known to the Department, for Driving While Intoxicated, within the confines of the 46th Precinct, Bronx County, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Probationary Police Officer falsely represented to a Bronx County Assistant District Attorney that he had observed said arrested individual operating a swerving vehicle westbound on 183rd Street, when, in fact, said Probationary Police Officer had not.

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

PD 158 151 (Rev. 1 97) Server

3. Said Probationary Police Officer Naetron King, while assigned to the 46th Precinct, on or about October 21, 2007, while on duty, having been assigned the arrest of an individual, known to the Department, for Driving While Intoxicated, within the confines of the 46th Precinct, Bronx County, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Probationary Police Officer signed an affidavit prepared by a Bronx County Assistant District Attorney that which falsely represented that said Probationary Police Officer had observed said arrested individual operating a swerving vehicle westbound on 183rd Street, when, in fact, said Probationary Police Officer had not.

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

4. Said Probationary Police Officer Naetron King, while assigned to the 46th Precinct, on or about March 9, 2009, having become aware of his having received orders to report for military duty for an aggregate consecutive period exceeding thirty (30) days, wrongfully did fail and neglect to submit all forms to his commanding officer as directed the Military and Extended Leave Desk, and to report immediately any change in service address or duty assignment, as required.

P.G. 205-23, Pages 1-2, Paragraphs 1, 3 and 10 – INDEFINITE MILITARY LEAVE PERSONNEL MATTERS

The Department was represented by David H. Green, Esq., Department Advocate's Office. Respondent was represented by Stephen L. Drummond, Esq., Drummond & Squillace PLLC.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1-3 and Not Guilty of Specification No. 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant John Eagan, Police Officer Herminio Colon, Sergeant Kristine Schelberger, Lieutenant Craig Schofield and Lieutenant James Dennedy as witnesses.

Lieutenant John Eagan

Eagan was assigned to the 46 Precinct. He identified Respondent as an Operation Impact officer from the command. On October 20, 2007, Eagan was working an 1800x0200 tour as the special operations lieutenant. He was assigned to an unmarked vehicle with Police Officer Herminio Colon as his driver. At approximately 2300 hours, they were driving south on Creston Avenue between 180th Street and Burnside Avenue. This was a residential area, with one southbound lane of traffic. There was a parking lane on either side.

Just south of 180th Street, Eagan and Colon observed a double-parked car. The driver was slumped over the wheel. Both officers got out of their vehicle and approached the driver. The street was lit and they could see inside the car.

Eagan was unsure if the motor of the car was running, but the keys were in the ignition (this was sufficient for a driving while intoxicated [DWI] arrest). Colon tapped on the window and there might have been a minimal response. He opened the door and spoke to the driver. Eagan smelled a strong odor of alcohol and the driver appeared to be intoxicated. He was also very overweight. The man was semiconscious but was able to speak. Colon assisted the man out of the car. He was wearing "like a sleeveless T-shirt" and had a skin disorder on his upper arms and shoulder area. Colon had to assist the man in walking back to the vehicle.

Eagan called for an Impact van to transport the man, and to get an arresting officer. The location of arrest lay in the Impact Zone. Moreover, Colon could not take the arrest because he was leaving on a trip early that morning.

The Impact van arrived several minutes later. During that time, Eagan recalled, the man stated that he should not have been drinking because he had a serious medical condition.

Eagan testified that Respondent arrived with the Impact van. He volunteered to take the arrest, saying, "I'll take this." The driver of the car was handcuffed and assisted into the van by Colon and Respondent. Colon and Respondent had a brief conversation. Colon told Eagan that they discussed the facts of the case. Respondent spent several minutes at the scene before driving away.

Eagan admitted that he did not give Respondent any directions regarding the arrest processing. Respondent did not ask any questions about it. Eagan did not assist in preparing the paperwork for the Intoxicated Driver Testing Unit (IDTU) examination.

A few months later, Eagan spoke to Colon at the 46 Precinct station house about a conversation Colon had with an assistant district attorney (ADA) from the Bronx County District Attorney's (DA) Office. The discussion between Eagan and Colon took place in the special operations / domestic violence office. Colon was concerned "about the testimony and the affidavit by" Respondent.

In response, Eagan obtained the complaint report and the arrest report. Department's Exhibit (DX) 7 was the complaint report and DX 6 was the arrest report. Eagan went to his commanding officer (CO) and reported that there were discrepancies between the arrest report and the actual facts of the case. Eagan's CO notified the Internal Affairs Bureau (IAB) and

ordered him to report there. He also ordered Eagan not to discuss the matter with anybody. IAB gave Eagan the same order, and Eagan gave it to Colon.

DX 4 was the criminal court complaint. The affidavit listed the location of offense as the northwest corner of Creston Avenue and East 183rd Street. Eagan testified that the actual location was south of 180th Street on Creston. This was a difference of over three blocks.

Furthermore, the affidavit stated that Respondent observed the defendant behind the wheel, swerving westbound on 183rd Street. In fact, the vehicle was never on 183rd Street swerving from side to side, Respondent never saw the car moving, and "never observed the defendant behind the wheel ever," including slumped over it. Neither Eagan nor Colon came across the vehicle while it was moving.

On the other hand, because Respondent interacted with the defendant, he could have observed that there was a strong odor of alcohol emanating from him.

On cross examination, Eagan stated that he and Colon approached the same side of the vehicle. Eagan might have been on the other side as well. Eagan did not recall how close he and Colon were to each other. They did not position themselves specifically with respect to a tactical advantage. Eagan did not recall who was closer to the driver side window. He did not recall what color or type of keys were used.

Colon's tour ended around 0200 hours as well. Eagan agreed that the arrest processing would take longer than the three hours left in the tour, although he knew that as a lieutenant, he always might have to perform overtime. He did not remember what time he or Colon went end of tour.

Eagan agreed that volunteering to take arrests was encouraged. Respondent had been a police officer, not including time spent at the Police Academy, a little longer than two months. Respondent had done arrest processing for DWI arrests in the past. He was a very active officer.

Eagan did not indicate anything about the incident in his memo book.

Eagan did not dispute that, in an interview with IAB, he was asked, "At what point did you inform Police Officer King of your observation," and answered, "I don't specifically remember I know that Police Officer Colon told him exactly what happened." Eagan agreed that because he did not hear the conversation, he could not say that Colon never told Respondent that the vehicle was swerving in and out of traffic, or any of the other things written in the affidavit.

Eagan agreed that the driver made a statement about consuming alcohol that night to him and Colon at the scene before Respondent arrived. (The complaint stated that Respondent asked the driver if he had anything to drink, and he responded, in sum and substance, "Just had a few drinks.").

Eagan asserted that the incident could be considered a "car stop," as the driver was in a car and the officers approached him. Turning a police vehicle's lights on and pulling someone over was not a prerequisite. In general, Eagan would have written in his Activity Log "car stop one under" in general and the double-parked car specifically. He agreed that the double parking was relevant to probable cause and what drew his attention in the first place. Nevertheless, Eagan, as a supervisor, would leave it to Colon's "preference" what to write.

Eagan testified that other officers besides Colon and Respondent might have assisted the driver to the transport van.

Eagan did not know if Colon and Respondent spoke at the station house.

Eagan only learned that Respondent was injured during the transport of the driver after Eagan came to work the next day.

Eagan agreed that Colon went to the DA's Office at least twice. When Colon approached him, Eagan did not look at his and Colon's Activity Logs because there was no need to. Respondent did not give Colon a copy of the complaint before Colon went to the DA the second time.

It was not within Eagan's discretion to speak to Colon and Respondent before going to the CO. The CO directed Eagan to take Colon and go to IAB, which they did.

Upon questioning by the Court, Eagan stated that the driver's vehicle was on the west side of Creston Avenue. The intersection with East 180th Street was a "T;" Creston was the "flat side" of the T.

Police Officer Herminio Colon

Colon currently was assigned to the Mounted Unit, but previously was assigned to the 46 Precinct. He started at the latter as an Impact officer, and later was assigned to the conditions unit. He and Respondent had worked together as Impact officers several times.

On October 21, 2007, Colon was working a 1730x0205 tour. He was assigned as Eagan's driver in an unmarked Ford Crown Victoria. Colon worked in Eagan's special operations units at the time.

When Eagan chose Colon to be his operator, he told Eagan that he could not take any arrests because he had a family event the next day. Eagan said that it was no problem.

At approximately 2300 hours, Colon observed a double-parked vehicle with the driver slumped over the wheel and the engine running. They were travelling north (Colon later

clarified that it was south) on Creston Avenue. There was one, one-way lane of traffic with parking on both sides. There was illumination from the lampposts. Colon did not recall if there was any kind of precipitation.

Colon tapped on the driver side window. Eagan was next to him. The driver, Person A, opened the door. Person A had slurred speech, bloodshot eyes, and a strong odor of alcohol. He said several times that he was sorry and should not have been drinking because he was undergoing dialysis. There were large cysts on his shoulders (skin disorders are a side effect of dialysis). Colon held up Person A to keep him from falling.

As Colon took Person A to the rear of the vehicle, Eagan got on the radio to call over an Impact van because Colon could not take the arrest. When the van arrived, Respondent exited first. He asked Colon if it was a DWI, and Colon said that it was. Colon found out later that Respondent was assigned the arrest.

The conversation between Respondent and Colon continued as they led Person A toward the van. Colon told Respondent that Person A was slumped over the wheel, obviously intoxicated, and "that was about it." Respondent "was like, it's okay, I got it, I got it."

Colon saw Respondent later at the station house, around the end of Colon's tour. Respondent displayed his hand and said that Person A fell on him while Respondent was taking him out of the vehicle. Respondent and Person A were at the 45 Precinct station house for the IDTU process. Colon did not tell Respondent anything more about the circumstances of the arrest.

Colon went to the DA's Office a few months after the arrest. The ADA asked him if he was involved in an arrest with Respondent, and Colon agreed. When he explained the facts of the case, the ADA told him it could not be the same case because the case she had involved

Colon and Respondent as partners in a vehicle, driving. They supposedly observed an individual swerving in and out of traffic, almost hitting several parked cars and pedestrians. The ADA showed Colon DX 5, the arraignment "blurb" or "DA summary." This was a synopsis written by the complaint room ADA to inform the arraignment ADA quickly about the facts of the case rather than by just looking at the complaint.

Colon denied that he went with Respondent to the 45 Precinct to conduct the tests. Colon and the ADA thought that the case must have involved a different officer named Colon.

Upon leaving, Colon called Respondent on the telephone. Colon tried "to tell him about the case." Respondent told Colon, who heard "shouting and screaming" in the background, that he was on military leave and could not talk. Respondent hung up.

A couple of weeks later, Colon met with the ADA again. She said that he appeared to have been involved in the arrest. Colon returned to his command and went to Eagan. They discussed the possibility of another Colon, and Eagan pulled up the complaint and arrest reports. After doing so, Eagan said, "I hope you didn't go along with this story." Colon replied, "Of course I did not; if this is what it is." Eagan went to the CO's office. When he returned, he said that they had to go to IAB. They did so.

After one of Colon's IAB interviews, Colon was at the 46 Precinct station house when Respondent entered. "He's holding his ID [identification card] to come in. He looks at me. I look at him, and he's showing me his ID that says no firearm." Respondent wanted to talk to Colon, so they went to the garage area. But Eagan was there and told Colon not to talk to Respondent.

At trial, Colon was shown the criminal court complaint. He stated that the actual location "where the car was actually stopped or where you came across the car" was "between Burnside –

East Burnside." Colon testified that he never observed the vehicle heading west on 183rd Street or swerving in any way. The affidavit stated that Respondent observed Person A behind the wheel, operating a vehicle. While Person A committed this act, Respondent was not the observing officer. Respondent did not observe Person A's vehicle stop before an intersection, and Colon did not observe him put his head on the steering wheel.

On cross examination, Colon stated that the incident took place "[b]etween 180, Creston Avenue and East Burnside Avenue." When the Court asked, believing it had been his testimony, whether his "answer previously was it was on Creston Avenue between 180th and Burnside Avenue," he agreed.[1] (This was not in the transcript, however).

Colon agreed that at a May 9, 2008, interview with IAB, he was asked, "[W]hat was the location?," and answered, "It was in it was umm, in Creston Avenue, umm, before, I believe, it was around Creston Avenue. I don't recall the exact address." Colon explained that the interviewers wanted an exact number address. He later told them that it was "between 180 and Creston Avenue."

Colon testified that 183rd Street was a two-way road with parking on both sides.

Colon agreed that the color of the vehicle was an important part of his observation. He testified, however, that it was dark-colored but he could not recall the color. He agreed stating at an official interview that it was green though.

Colon was asked whether he stated, at the IAB interview, "Umm, me and my Lieutenant, that was Lieutenant was driving. We're driving and we observe, umm, Defendant in the car driving down." There was an en-dash after this sentence in the transcript. Colon denied making

[1] The transcript does not reflect that this had been his testimony, although it was Eagan's testimony. But in light of the fact that the Court thought it was Colon's testimony, that might have been what he said. Some of the confusion with Colon's testimony was that he was describing the location as "between" the names or partial names of several streets, some of which actually intersect each other, like East 180th Street and Creston Avenue, or East 180th and Burnside Avenue.

a representation that Person A was driving, explaining that he meant that he and Eagan were "driving down."

Colon agreed that Person A was "very heavyset." The most important thing at the time was to get him from his vehicle to the transport vehicle safely.

Colon had been an officer for a little over a year at the time of the incident. Respondent had been out of the Academy for a little over two months.

Colon agreed that it was his responsibility, as one officer passing the arrest to another, to ensure that "absolute accurate information was conveyed." Colon told Respondent what happened because Respondent was the only one helping Person A into the van. Colon "didn't know exactly" at that time if Respondent would be assigned the arrest. When Colon confirmed to Respondent that it was a DWI, Respondent clapped his hands together and rubbed them around each other.

Colon testified that he told Respondent that Person A had bloodshot eyes and he was double-parked.

Colon denied telling Respondent that he had a wedding-related personal event to attend. When asked at trial if he was getting married the next week, he stated that he was already married. When asked if he was having "a rehearsal or something" the day after the incident, he said that he had a "family situation." When the Court insisted that Colon answer the question, he explained that he had gotten married, but some people were unable to make it to the wedding, so there was another "little ceremony" for those individuals.

Colon testified that he did not know where Eagan was the whole time.

Colon testified that he wrote in his Activity Log that he conducted a car stop at the corner of Burnside and Creston Avenues. He did not write that it was a double parked car.

When Colon saw Respondent later in the tour, he was aware that Respondent had been assigned the arrest. Respondent appeared to be seriously hurt. Colon did not assist Respondent in filling out the paperwork.

Colon was unsure whether he had his Activity Log when he first met with the ADA. He agreed that "for whatever reason [he] just couldn't remember the events of that date." He was "not aware of that arrest because for whatever reason it just didn't jog [his] memory." The second time he met with the ADA, he remembered. He did not recall if he referenced his Activity Log at that time.

Colon did not learn that Respondent listed Colon as his partner because Colon, having observed the events, could "go to court to testify" if Respondent were called for military duty.

Colon conceded that he interpreted Eagan's warning to mean that Colon would be in trouble if he went along with Respondent's version of events given to the ADA. Colon agreed that Eagan was asserting something other than what Respondent had asserted.

Colon admitted that he was told by IAB not to talk to anyone about the facts of the case.

On re-direct examination, Colon denied ever seeing Respondent in the vicinity of 183rd Street and Creston Avenue.

Colon agreed that he was asked the following question at his official Department interview of May 9, 2008: "Are you clear in your . . . recollection that you didn't see this car driving whatsoever? The car was stationary?" He answered, "His car was stationed, parked, engine running."

On re-cross examination, Colon agreed that he knew, at the time of his interview, based on Eagan's warning, that the issue of whether Person A's vehicle was stationary or moving was an important, problematic issue for the case.

Upon questioning by the Court, Colon clarified that he observed Person A's car on Creston Avenue between East 180th Street and Burnside Avenue. He and Eagan had not been driving on Creston for a very long stretch. Rather, he agreed, they were "kind of like making kind of like circles but then in various side streets." Thus, it was possible that they had just turned onto Creston.

Colon testified that he told Respondent that the vehicle's ignition was running.

Sergeant Kristine Schelberger

Schelberger was assigned to IAB. She gathered documents concerning a perjury investigation involving Respondent and an arrest in which he participated. The documents concerned Respondent's meeting with an ADA in the Bronx DA's Office. The arrestee's name was Person A. DX 8 was the Intoxicated Driver Examination, performed at the IDTU, for Person A.

Schelberger conducted an official Department interview of Respondent on May 6, 2010 (see DX 9).

On cross examination, Schelberger testified that on October 20, 2007 (the date of the arrest), Respondent had been a police officer for about two months, not counting time spent in the Police Academy. He had filled out arrest reports before, although Schelberger's basis for this testimony only was that Respondent's tax number was on the documents. This was Respondent's first drunk driving arrest, however.

Schelberger's investigation did not determine whether any officers sat with Respondent as he filled out the arrest documents.

Schelberger agreed that Respondent had injured himself on "that night" of the arrest. He had to be transported to a hospital, where he was given acetaminophen. Schelberger did not know if there was any other medication. Respondent also received two stitches. Schelberger did not know if Respondent got help from other officers with post-arrest work after he returned from the hospital. She did not know if Respondent had gotten any sleep after returning from the hospital and before filling out the paperwork. Respondent said in the interview that he was up for 20 hours doing the arrest processing.

Schelberger also interviewed the arrestee, Person A (see Respondent's Exhibit [RX] A, transcript). She determined that he was very intoxicated that night, unsteady on his feet and with bloodshot, watery eyes. He also was operating a motor vehicle. He could not recall where he had been and only remembered waking up in a jail cell. He was a very large individual, so it would have been difficult to hold and keep him up.

Schelberger interviewed Colon as well. Colon and Respondent agreed that Person A was in the vehicle, slumped over in the driver's seat. The keys were in the ignition. Their disagreement was on whether Person A's vehicle actually had been moving. Colon stated that there was no reckless driving.

Schelberger conceded that Colon did not report accurately the color of PersonA's car. When asked, "He gave you a completely different car?," she replied, "He gave me the color and he gave me the make that was it."

Colon indicated in his Activity Log that "at 2024 a car stopped at corner." Schelberger said this meant that the officers stopped a car. When asked if "common sense would dictate that . . . would mean the car was moving before it was stopped," and the Court clarified, "Is that your understanding," Schelberger answered, "That is what I would put in my memo book."

Schelberger indicated that Colon received a letter of instruction and Eagan a letter of reprimand concerning the events of October 20, 2007. These were from an IAB deputy inspector. The difference in terminology was up to the issuer, but the letter of reprimand format had been discontinued because it was deemed a violation of the contracts between the Department and the uniformed-member unions. The closing report in the case indicated that Eagan received a letter of instruction, not reprimand. Eagan's letter concerned assigning officers as the arresting officer, and Colon's was as to his Activity Log.

On re-direct examination, Schelberger agreed that she would consider it a "car stop" if she came across "keys in the ignition and car turned on and you exit your RMP to investigate or speak with the operator."

Schelberger testified that Person A's case was dismissed because of the discrepancy in the criminal court complaint.

On re-cross examination, Schelberger opined that it would be up to the individual officer to decide whether to put "car stop" or "double parked car" in such a situation, so as to refresh one's memory.

Lieutenant Craig Schofield

At the time of trial, Schofield was assigned to the Fleet Services Division. He previously was assigned to IAB, as well as the 104 Precinct and Police Service Area (PSA) 5. At PSA 5, Schofield was the administrative ("admin") lieutenant. Respondent was assigned there to a Viper unit.

Department's Exhibit (DX) 1 was a Leave of Absence Report, or '28,' for Friday, March 6 at 2300 hours through Sunday, March 8, 2009, at either 0200 or 0700 hours, plus an

acknowledgment of military service, attached by Respondent. This was submitted to Schofield on March 9, 2009.

DX 2 was a second '28,' also submitted on March 9, 2009. This one was for March 8 at 2300 hours to April 10, 2009, at 0723 hours. Schofield approved the leave request.

Thus, Respondent was not present for duty with the Department from March 7, 2009, until April 10, 2009. This was a period of more than 30 days.

On cross examination, Schofield indicated that the provision requiring notification of the Department for military duty of more than 30 days was predicated on the Department member receiving the military orders "in advance." The member was required to inform the Department immediately thereafter.

Schofield acknowledged that Respondent had received two separate orders to report for military service. He was approved for military leave on March 7 and 8, 2009. Respondent did not turn in the second set of orders to Schofield during the period he was on military duty. Schofield did not know when Respondent received the second orders.

Lieutenant James Dennedy

Dennedy indicated that he was the integrity control officer of the Personnel Orders Section at the time of trial. One of the commands within Dennedy's section was the Military and Extended Leave Desk (MELD). Dennedy previously was assigned to the 20 Precinct and IAB.

Dennedy was asked what the responsibilities were of a Department member who was also a military reservist when the member was scheduled to serve "for a period of time to exceed, abrogated [sic, i.e., "aggregated"] to exceed 30 day[s]." Dennedy stated that Patrol Guide § 205-

23 required the member to notify the "commanding officer supervisory head of their command." The member also was to notify MELD to receive instructions.

It was not unusual for a member to receive written military orders after a deployment already had begun. The member was supposed to email or fax "us" the orders. Even if the member did not have the orders in writing, he should contact MELD for instructions.

Respondent first contacted MELD on March 31, 2009. DX 3 was a log sheet showing that Respondent submitted a military paperwork package on that date. Dennedy knew that Respondent submitted it himself because there was a signature.

On cross examination, Dennedy testified that he previously served in both the Marine Corps and the Army National Guard, as an aviation supplier. He was aware that on occasion, military members "might get orders that orders are coming and in fact orders will show up." He was not aware of occasions where members were told that orders were coming but the orders did not come.

Dennedy agreed that Respondent was on military duty when he submitted his March 31, 2009, paperwork. Dennedy did not know when Respondent received the extended orders.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, aside from being a police officer, was also a staff sergeant in the United States Army Reserve. He had served there for 15 years and had that rank since May 2010. He

had done several overseas tours of duty, including in Afghanistan and Iraq. He had been awarded the Combat Action Badge, the Achievement Medal and the Good Conduct Medal.

Respondent discussed several of his military evaluations. There was a rater, who was his direct supervisor. The senior rater was that individual's supervisor. Superior to them was the senior reviewer. RX B3 was the evaluation for March 5, 2010, through March 4, 2011. RX B1 was for November 1, 2009, through March 4, 2010. RX B2 was for November 1, 2008, through October 31, 2009. Respondent received ratings of meeting or exceeding standards for all of these evaluations.

Respondent previously was known by the name Juan Pitti. That was his father's name, although he had never met the man. "He was never there for me." While in the military in 2000, he took his mother's last name and took as his first name the name of a friend who was killed in Kuwait.

Prior to entering the Academy to become a police officer on January 10, 2007, Respondent served 10 years as an auxiliary police officer at the 46 Precinct. He graduated from the Academy on June 24, 2007, and was assigned right to the 46 Precinct again, as an Impact officer. One of his first arrests as a police officer involved counterfeit goods. The suspects were "an African individual and two Chinese individuals." $150,000 cash was seized, and although Respondent had access to the cash, he vouchered it. It was the same with the $50,000 worth of blank Western Union "checks."

On October 20, 2007, Respondent worked a 1732x0205 tour. He actually "physically start[ed] getting ready to go to work or leaving [his] home" around 1400 hours. He became involved in Person A's case around 2200. He was in an Impact van which was called to transport Person A back to the station house. Colon and Eagan were present when Respondent arrived.

Respondent observed that Person A was very heavy and "had some type of bumps on him when I was grabbing him." These bumps were "unhealthy" but Respondent touched Person A anyway.

Respondent had no conversation "whatsoever" with Eagan, and spoke to Colon only "in the sense of getting [Person A] from . . . the rear of the vehicle into the van." Transport was the objective at that point, and Respondent only was assigned the arrest at the station house. He denied volunteering for the arrest.

Colon told Respondent "to take – you're taking this collar" when both of them were in the 124 Room. Colon could not take the arrest because of "something to do with his wedding the next day, a rehearsal." Person A was already in a holding cell.

Colon told Respondent that Person A was driving "on 183rd Street and Creston Avenue and he was swerving." Colon indicated that Person A was swerving on 183rd itself. Person A stopped on Creston Avenue, slumped over the steering wheel. Person A told Colon that he had had a few drinks. The information about the prior drinking was told by Colon to Respondent "[i]n the 124 Room, when he received the information."

In his Activity Log (RX C), Respondent indicated at 2245, "car stop w/b on 183rd & Creston Avenue." He wrote this on October 20, 2007.

Colon told Respondent that he needed to transport Person A to the 45 Precinct within a certain time frame to be breath-tested. Respondent did not know this previously. At the 45 Precinct station house, Respondent removed Person A from the vehicle, but Person A started falling because he was so heavy. When Respondent tried to catch him, Respondent's hand got caught on the door and he started bleeding. If Respondent had not attempted to catch Person A, the suspect would have fallen while handcuffed. Person A was not injured. Respondent took him into the station house, where the desk officer told Respondent "to do a line of duty" and called

Emergency Medical Service (EMS) personnel. EMS responded and bandaged Respondent's fingers. He continued with the arrest processing.

Respondent filled out the IDTU paperwork. He used his conservations with Colon to do so and did not put down anything "differently" from what Colon told him. He agreed that "with respect to the vehicle of Person A, . . . what [he] wrote down was based on [his] conversation with" Colon. (The IDTU paperwork noted that Person A "almost hit a few cars" and stopped at a red light).

Person A's breathalyzer result was high, something like 0.15. Respondent returned to the 46 Precinct with him and saw Colon again. Respondent told Colon what happened with his hand, but Colon did not "make any effort at that point to take over the arrest." He told Respondent he was leaving.

Around 0300 or 0400 hours that morning, Respondent received additional treatment at the emergency room of St. Barnabas Hospital. This included [redacted] He returned to his command "with [Person A]" and wrote up the complaint and arrest reports. Respondent also had to take one of his prior arrestees to Brooklyn because he had a warrant. This was once the 0700x1500 tour had started. He and another officer transported that arrestee, and an arrestee who had to be returned to Manhattan on a warrant.

Respondent testified that he returned to his command around 1100 hours. But he also said that he arrived at the DA's Office around that same time. At that point, he stated, he had been up for more than 13 hours. When his counsel pointed out that "if you fast forward, based on what you told me earlier, you said you started getting ready for work at 1400 hours and now we're talking about eleven o'clock the next day," Respondent revised this to around 16 hours. He waited for his case to be called.

On the day of the incident, Respondent's highest level of education was high school. He never had processed a DWI arrest before or filled out police paperwork completely by himself. Previously, a sergeant had sat with him and they went through the complaint and arrest reports together.

Respondent did not know what a deponent was when he signed the complaint in the instant case. While he signed a document indicating that he observed certain events regarding Person A's vehicle, it was not his intention to say that he had seen Person A driving. Whatever he deposed was told to him by Colon, including the circumstantial evidence of intoxication from Person A's person and the statement about having had a few drinks. If Respondent had written that he had been "informed by Officer Colon," it all would have been correct. Respondent denied having anything to gain by ginning up the arrest.

Respondent testified that he listed Colon as his partner on "Police paperwork" so Colon could give the ADA the details of the incident, having observed them firsthand.

Respondent signed the complaint at 1656 hours on October 21, 2007. He now testified that he had been awake for over 24 hours.

Respondent saw Colon about two days later in the muster room and gave him a copy of the complaint so he could review it for when he went to "court." Colon folded the affidavit and put it in his back pocket.

Respondent explained that for his military service, he was required to serve one weekend per month and two weeks per year. Each year he received a schedule of weekends, but orders could change. The military fiscal year was October to September. RX E was the schedule beginning in October 2007. Respondent gave this to the Department.

Respondent reported for military duty on the weekend of March 7-8, 2009. This was one of the pre-announced monthly drills. He notified the Department in advance (see DX 1, first '28'). While there, around 1700 hours on March 8, 2009, he received orders to report for 30 days, starting the next day (see RX D, 30-day orders).

Respondent testified that as a police officer, he received 35 military leave days per year. When he came close to that limit, during his March 9, 2009, assignment, he requested leave from the Army to drop off paperwork at MELD. Permission was not granted right away, but toward the end of March, his supervisors gave him two hours' leave to appear at the Department. He came to MELD and signed the drop-off log (DX 3) on March 31, 2009.

Respondent was on military duty when he received a telephone call from Colon. Respondent was in Texas at the time. Colon asked him what happened, and Respondent replied, "What are you talking about? The collar?" Colon told Respondent that he had just left the DA's Office "and everything is screwed up." Colon said that Respondent needed to speak to Eagan. Respondent asked why, as Eagan "had nothing to do with our conversation." Respondent ended the conversation because he was working at the time. He contended that Colon was "very nervous" because "he didn't know what was going on." Colon never indicated that Respondent wrote things on the affidavit that Colon had not told him.

On cross examination, Respondent stated that he held the Army rank of specialist in 2007. He was a patient administration specialist, which involved "taking care of" injured soldiers and "keeping track of what's going on with them." He kept medical records in order.

Respondent testified that in his Army position, he could work no longer than 12 straight hours without getting at least 4 hours' rest. Even in an emergency situation, he would rotate with

a partner. Other than the police incident at bar, he had never had to work a double tour. He understood that this was a possibility, however, and was informed of such at the Academy.

At the time of the incident, Respondent had a satisfactory working relationship with both Eagan and Colon.

Respondent indicated that he was unsure how to fill out the IDTU paperwork. He did not ask anyone for assistance, but claimed that the 45 Precinct supervisors would not assist anyone on a non- 45 Precinct arrest. He asked a desk officer for assistance, but was refused.

The Impact sergeant had already left by the time Respondent began "the paperwork." He did not ask anyone else for help. He did not know whether he was doing the paperwork correctly. Respondent admitted that he did not ask the ADA what the word "deponent" meant.

Respondent was aware that the Patrol Guide mandated he contact MELD if he was going to be away from Department duty for a period exceeding 30 days. He agreed that he did not comply because he believed that his Army orders superseded the Patrol Guide.

On re-direct examination, Respondent testified that if he had been injured in the line of duty in the Army as he had been in the Department, the sergeant in charge would have taken him to the hospital and been responsible for completing the paperwork on a given injured soldier.

Upon examination by the Court, Respondent agreed that Colon went over the arrest with him in the 124 Room "a little slowly." Respondent asked Colon some follow-up questions. Respondent agreed that he observed Person A's circumstantial personal displays of intoxication, in addition to Colon telling him about it.

Respondent testified that the ADA was a woman. He told her that Person A had done the things cited in the complaint, not that he had observed Person A doing them. He did not discuss with her the fact that it was an assigned arrest. She asked for his partner, and he gave Colon's

name. It never occurred to Respondent to tell her that Colon had observed the events but Respondent had been assigned the arrest.

Respondent asserted that it was accurate to say that Colon was his partner for the arrest.

FINDINGS AND ANALYSIS

Specification Nos. 1-3

The core allegation contained in the first three specifications against Respondent is that he falsely stated – in an arrest report, orally to an assistant district attorney, and in the criminal court complaint that he witnessed the arrestee operating a swerving vehicle westbound on 183rd Street in the Bronx. In one sense, there is no dispute: Respondent did not observe the arrestee do any of this. The Department, however, argued that Respondent intentionally misrepresented the facts. Respondent denied this. His contention was that he was informed of these facts by the apprehending officer, who then changed his story.

Lieutenant John Eagan and his driver, Police Officer Herminio Colon, of the 46 Precinct, testified that on October 20, 2007, they observed a double-parked vehicle in the area of Creston Avenue and East 180th Street in the Bronx. The driver was identified as Person A. He smelled heavily of alcohol and had to be assisted from his car. The ignition was running or at the very least the keys were in the ignition. It was not disputed that, in any event, a DWI arrest was authorized.

Colon did not want to take the arrest because he had a family event the next day. Eagan and Colon called for an Operation Impact van so that someone could take the arrest. The arrest was assigned to Respondent.

Colon and Respondent differed on how the latter was informed of the circumstances of the arrest. Colon said that he tried to give Respondent the details while they were transporting Person A to the van, but Respondent was dismissive and sanguine, saying, "I got it." Respondent testified that he sat down with Colon in the 124 Room and went over the arrest slowly. It was Respondent's first DWI arrest and he wanted to get it right.

It is undisputed that Respondent did not get everything right. When he arrived at the District Attorney's Office, he spoke to the ADA about the arrest. The complaint room ADA prepared the criminal court affidavit and Respondent signed it. The first paragraph of the factual portion of the affidavit began, "Deponent states that, at the above time and place, he observed . . . ." Respondent was the deponent, or signer/declarer, of the affidavit. By stating such, Respondent was stating that he observed Person A operating the vehicle in question, "heading west on 183rd St., swerving between the left and right side of the two-way street," and that, as stated in the second paragraph, he observed the vehicle "stop before [the] Creston Avenue intersection" and Person A "put his head down on the steering wheel." Finally, Respondent stated that when he asked Person A whether he had anything to drink, the defendant responded, in sum and substance, "Just a few drinks." By the time Respondent signed the complaint, he had been on duty for over 24 hours.

It was undisputed that Respondent did not observe any of this. He was in a position to observe or did in fact observe, however, the outward signs of Person A's intoxication, like slurred speech and bloodshot eyes, and the results of the Intoxicated Driver Examination.

The Department's claim was broader, however. This was not simply a case where the assigned officer carelessly stated, "Deponent observed," when he should have written, "Deponent is informed by a prior officer that the prior officer observed . . . ." See, e.g., *Case No.*

85671/09 (Sept. 2, 2011); *Case No. 85574/09* (June 8, 2010). Here, the Department asserted, neither Eagan nor Colon told Respondent that Person A's vehicle was moving on 183rd Street, swerving between the left and right sides of the road, and finally coming to a stop. Colon said that he told Respondent that they found Person A in a stationary vehicle blocks away from 183rd Street. Respondent contended that Colon told him that Person A was, in fact, on 183rd Street, swerving between the sides of the road, and coming to a stop.

Colon had no known reason to testify falsely at trial about what he told Respondent. The entire incident came to light because of Colon. He was listed as Respondent's "partner" on the DA's paperwork. While this was not accurate, the complaint room ADA would have wanted to know with whom Respondent was working. When the ADA assigned to try the case contacted Colon later to prepare, Colon said that the events depicted in the affidavit did not occur. If the events had occurred the way Respondent described them, Colon would have no reason to tell the ADA that they did not. Nor would Colon have any reason to contact Respondent and tell him that "everything is screwed up," as Respondent testified. And because Colon actually witnessed all the elements of the DWI plus the apprehension of Person A, it is reasonable that he would remember them better than Respondent would remember what Colon told him about them.

Respondent pointed to a remark made by Eagan to Colon. When Colon told him that Respondent had reported to the ADA that Person A was swerving on 183rd Street, Eagan said, "I hope you're not going with this story." Respondent suggested that fear of contradicting a supervisor made Colon stick with the stationary-vehicle account. But Colon had already "stuck" to this account by the time Eagan made the remark: it was after Colon met with the ADA for the second time and knew there was a problem. Furthermore, Eagan had just as little reason to fabricate as Colon did.

It is true that Colon's account raised questions. For example, he wrote "car stop" in his Activity Log, without indicating that he actually had observed an already-parked vehicle. He seemed to indicate, at first, in his official interview, that he and Eagan were "driving down" Creston Avenue and that he was unsure where on Creston Person A's vehicle was parked. And he must have told Respondent more than he admitted at trial, as Respondent knew that it was a car stop, that Colon could not take the arrest because he had a wedding-related event the next day, and that Person A made an incriminating statement at the scene. None of these, however, explain why Colon purportedly would have forgotten or concealed what Respondent claims are the true facts: that Person A was swerving on 183rd Street.

Respondent's testimony is more troubling based on the questions it raised about his reliability. For one thing, if he did not know he was getting the arrest, there would have been little reason for him to be in the 124 Room. He originally stated that he had been awake for more than 13 hours by the time he got to the DA's Office when, according to his own testimony, it had to have been longer than 24 hours. He misheard Colon regarding the family event, thinking it was a rehearsal. He stated that the ADA was female when all indications are that the ADA was male. It raises questions as to Respondent's ability to recount events related to the case accurately.

Respondent's testimony also revealed that he knew there were problems with the case. When Colon called him and wanted to know what happened, Respondent asked if he was talking about "the collar." If Respondent had no inkling that he had erred with regard to the case, he would have little reason to know immediately what Colon had in mind.

Respondent admitted that he was fatigued when he met with the ADA. He would not have had very much time to meet with Colon, as it is unlikely that it would have been a lengthy

conversation. There was not that much to discuss because it was an uncomplicated arrest. Colon's account of him trying to tell Respondent the details at the scene, and Respondent for the most part blowing him off, comports more with the evidence than does Respondent's account of Colon patiently sitting down with him and going over the case. Thus, it is reasonable to conclude that Respondent's understanding of the facts was, at the very least, incorrect and incomplete.

Accordingly, Respondent is found Guilty of Specification Nos. 1-3, "falsely represent[ing]" in the arrest report, orally to an assistant district attorney, and in the criminal court affidavit, that he observed the arrestee swerving in and out of traffic on 183rd Street in the Bronx.

Specification No. 4

Respondent was a member of the Army Reserve. He was required to serve one weekend per month and two weeks per year. He received orders to report for military duty for the weekend of March 7-8, 2009, and put in a '28' for those dates (DX 1). While there, he received orders to report for an additional month beginning Monday, March 9, 2009. He turned in another '28' (DX 2), but apparently did not turn in the orders themselves to his commanding officer. He also apparently did not fill out the Military and Extended Leave Desk forms or appear there until March 31, 2009.

These latter requirements allegedly were triggered because, according to the Department, Respondent's orders fell within the rule of Patrol Guide § 205 23. The procedure states, "When a member of the service . . . receives orders to report for military duty . . . for a period that will exceed thirty (30) days . . . , the Military and Extended Leave Desk must be contacted." The

Department contended that because the total military duty period exceeded 30 days, the MELD provisions were triggered.

There appear to have been two separate periods of time. The admin lieutenant testified that the second '28' was from March 9 to April 10, 2009, which would yield 32 days. But the Advocate stated that the second '28' was for an additional 30 days. 30 days is written on the '28' itself. The originally written dates appear to be March 8 to April 7, 2009, 30 days. That was later overwritten, apparently, to April 10, either 32 or 33 days, depending on which date in March one starts with.

Moreover, the leave period for the first '28' ended at either 0200 or 0700 hours on March 8, 2009. The leave period for the second '28' began at 2300 on March 8, 2009. The acknowledgement letter from the Army attached to the first '28' stated that Respondent's weekend drill was for March 7-8, 2009, beginning at 0730. The orders for the 30 days of service (RX D) stated that they were to begin at 0800 on March 9, 2009.

The evidence as a whole, therefore, demonstrates that there were two periods of military duty. One ended at some point on March 8, 2009, and the next began on March 9, 2009. The first period was to last 2 days, and the second period was set to last 30 days. There was no testimony that any extension in the second '28' was for military purposes, and even if it was, the original '28' was for 30 days. Any extension should not be held against Respondent without testimony that he knew his second period of service was to exceed 30 days. Because Respondent did not receive orders to report for a period in excess of 30 days, the Patrol Guide procedure did not apply to him. Accordingly, he is found Not Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2007. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of false statements during arrest processing. He was assigned a driving while intoxicated arrest. The apprehending officer attempted to tell Respondent the details of the incident, but he did not get all the facts. When, in fact, the driver was found by officers in a stationary vehicle passed out at the wheel on Creston Avenue between 180th Street and Burnside Avenue in the Bronx, Respondent wrote in the arrest report that he was swerving in and out of traffic on 183rd Street. He told this to the assistant district attorney as well, signing a sworn criminal complaint to that effect. Respondent also incorrectly stated to the ADA and in the complaint itself that he had observed this conduct; in fact, he was told about some of it by the apprehending officer, and the rest never occurred.

The Department recommended termination, but the facts do not support it. The baseline penalty in such cases is the forfeiture of 30 vacation days. See *Case No. 85574/09*, p. 8 (June 8, 2010). That has been raised to include dismissal probation in cases where the false statements were willful, in conjunction with other misconduct. See *Case No. 82080/06* (Sept. 10, 2008); *Case No. 82558/07* (Feb. 11, 2008). Members have been terminated for perjury, see, e.g., *Case Nos. 76818-19/01* (May 4, 2003), but perjury was not charged here. The Department did not prove that Respondent did not believe the statements to be true, see Penal Law § 210.00 (5).

The facts nevertheless call for a high penalty. Respondent represented that he had observed events that never occurred. He gave incorrect information, in a sworn affidavit, in which he said he was the observer. His statement that Person A was not merely intoxicated behind the wheel of a stationary car, but was swerving on a public roadway, and thus actively was endangering passersby both vehicular and pedestrian, could have led the arraignment judge to set higher bail. Thus, while Respondent might have thought that there was nothing to gain by making the arrest look more serious than it was, that is not the case.

Nonetheless, the Court has reviewed Respondent's work history. He also submitted a package of documents pertaining to penalty. These included references to both his Department and military career. Respondent certainly is held in very high regard by the Army itself and by his military colleagues, having received many commendations and favorable evaluations for his wartime service. Moreover, the Court notes that the Police Commissioner honored Respondent and other members of his Viper team for helping to track down the killer of a young boy in a high-profile stabbing. Although this apparently happened while Respondent was on modified duty, he and the others were nevertheless invited to a ceremony with the Police Commissioner and the Chief of Housing.

Accordingly, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit 30 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED
FEB 04 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NAETRON KING
TAX REGISTRY NO. 943441
DISCIPLINARY CASE NO. 2009-1098

In 2009, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 3.0 "Competent" in 2007 and 2008. [redacted] Respondent has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials