



POLICE DEPARTMENT

July 31, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Steven Lopez
Tax Registry No. 938880
Patrol Borough Bronx
Disciplinary Case Nos. 2012-6680 & 2012-7147

The above named member of the Department appeared before me on December 12, 2012, and April 12, 2013, charged with the following:

Disciplinary Case No. 2012-6680

1. Said Police Officer Steve[n] Lopez, while assigned to the Patrol Borough Bronx command, on or about and between July 12, 2010 and August 9, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer on two occasions requested the assistance of another member of the service to prevent the processing and adjudication of summonses issued to various individuals.

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

Disciplinary Case No. 2012 7147

1. Said Police Officer Steven Lopez, while assigned to the 46th Precinct, on or about July 7, 2011, after being involved in an unusual police occurrence, did fail and neglect to request the response of the patrol supervisor, precinct of occurrence, as required. (*As amended*)

P.G. 212-32, Page 1, Paragraph 2 OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE

2. Said Police Officer Steven Lopez, while assigned to the 46th Precinct, on or about July 7, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer provided information to the United States Attorney's Office regarding possible corruption or misconduct and failed to report such disclosure to the Department.

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

The Department was represented by Louis Bara, 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 Disciplinary Case No. 2012 6680 and a plea of Not Guilty to Disciplinary Case No. 2012-7147.

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

DECISION

Disciplinary Case No. 2012-6680

Respondent, having pleaded guilty, is found Guilty.

Disciplinary Case No. 2012-7147

It is recommended that these charges be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant [REDACTED] James and Detective [REDACTED] Santiago as witnesses.

Sergeant [REDACTED] James

James, an eight-year member of the Department assigned to Internal Affairs Bureau (IAB), recalled that she was assigned to investigate Respondent on November 7, 2011, after a newspaper article reported that a federal judge had reprimanded Respondent for lying at a federal hearing regarding ticket fixing. James stated that the allegation that Respondent had lied was unsubstantiated by IAB.

James was instructed to contact Assistant United States Attorney (AUSA) Person A to find out if Person A had interviewed Respondent prior to his testimony at the federal hearing. Respondent was a member of a team that had arrested an individual who Person A was prosecuting on federal gun charges. James telephoned Person A who informed James that she had met with Respondent on two occasions and that her interviews including asked him about his involvement in the ticket-fixing scandal.

Person A told James that at their first meeting, Respondent had denied that he had been involved in ticket fixing, but that at their second meeting, Respondent had admitted that he had attempted to fix one ticket. After Person A played wiretap recordings for Respondent that she had received from the Bronx County District Attorney's Office (Bronx DA), Respondent admitted that he had attempted to fix two tickets. On July 7, 2011, Respondent entered into a proffer agreement with the United States Attorney's Office (USAO). The agreement stipulated that Respondent would receive immunity for his cooperation with the USAO and that he would not be prosecuted for any statements that he made at his interviews regarding ticket-fixing. No members of the service (MOS) assigned to IAB were present at USAO when Respondent entered into this proffer agreement.

On cross-examination, James testified that she worked with IAB Group 21 regarding investigating the ticket-fixing scandal in the Bronx and that the investigation was a joint operation with the Bronx DA which took place during 2010. The lead investigator on the ticket-fixing scandal was Detective [REDACTED] Katakofsky who was assigned to IAB Group 22. James did not know if Katakofsky was the affiant for the wiretap affidavits that were submitted by the Bronx DA to the judge who authorized the wiretap during the year-long investigation. The resulting wiretap conversations were listened to by members of IAB including conversations in which Respondent was one of the parties. The recordings that Person A played during the proffer meeting were the same recordings that IAB members listened to during their investigation.

James testified that as an IAB investigator she had been directed to respond to "call out" scenes which involved an "unusual police occurrence." James conceded that these unusual police occurrences concerned situations where an officer was involved or accused of having been involved in a specific incident in which the police had been called to the scene. James agreed that when an off-duty police officer is present at a location and the police are called to respond to the location this constitutes an "unusual police occurrence," that the off-duty officer has an obligation to request that the patrol supervisor respond to the location, and that the patrol supervisor is obligated to call IAB to generate a log which may be used to open an investigation or to change the duty status of the off-duty officer. James agreed that Respondent's duty status has never been altered from the time that an IAB investigator heard his voice on a wiretap recording up to the commencement of this administrative trial.

James agreed that Patrol Guide Section 206-13 mandates the procedures which IAB must employ in investigating and interrogating an officer. This Patrol Guide Section requires that IAB must inform the subject officer of the allegation against him, remind him that lying is prohibited and that the interview is being recorded. If IAB investigators do not follow these specific procedures, the interrogating officers could be subjected to disciplinary action. James also agreed that if an officer who has been arrested meets with a prosecutor to discuss the charge against him, that officer is under no obligation to immediately notify the Department and disclose the contents of the meeting with the Department. That officer would be permitted to wait until he or she is interviewed by the Department to report that meeting and would not be subject to any misconduct charge of having failed to report the meeting sooner. James further agreed that it would be improper for an IAB investigator to approach an officer who had just left a meeting with his attorney and a prosecutor and ask the officer about what had happened at the meeting because doing this would violate IAB guidelines. James agreed that an officer does not have to inform the Department about meetings the officer had with his attorney or a prosecutor until an official Department interview takes place.

On redirect examination, James clarified that if an officer who had a pending criminal matter met with a prosecutor and entered into an agreement that would directly impact an IAB investigation, IAB should be made aware of this agreement by the officer.

On re cross examination, James testified that an officer who is aware that he has been accused of misconduct is expected to notify the Department about the allegation. When James was asked whether an officer would still be required to inform the Department if the Department was already aware of the misconduct, James stated that the

answer depended upon the specific facts of the case. James confirmed that Person A did not notify Respondent about any other allegations against him besides the ticket fixing allegation which IAB was already aware of.

Detective [REDACTED] Santiago

Santiago, a 16-year member of the Department assigned to IAB, was assigned to the ticket-fixing scandal being investigated during July, 2011. Santiago's assignment was to conduct official Department interviews of the subject officers. Prior to questioning a subject officer, she conducted a background check regarding the subject officer and reviewed the evidence regarding subject officer, such as wiretap recordings and wiretap transcripts.

On January 5, 2012, Santiago conducted an official Department interview of Respondent regarding the ticket fixing allegation against him. Prior to interviewing Respondent, Santiago reviewed wiretap recordings to which Respondent was a party. A July 12, 2010 wiretap recording revealed that Respondent called Police Officer Jaime Payan, the Patrolmen's Benevolent Association delegate at the 46 Precinct and requested that Payan "take care of" a summons for a family friend. Santiago determined that the information that Respondent provided to Payan was inaccurate and, as a result, the person who was issued this summons paid it. A second wiretap revealed that Respondent called Payan again on August 9, 2010, and asked him to fix a ticket that had been issued to Respondent because he had double parked his personal vehicle. Payan informed Respondent that that ticket could not be "taken care of" because a scanning system had been put in place which prevented this.

At the January 5, 2012 official Department interview, Santiago did not play these recordings for Respondent because he candidly admitted that he had attempted to fix two tickets, an admission that was consistent with the recordings. Santiago was unaware that Respondent had previously admitted this misconduct to Person A , and Santiago was also not aware that Respondent had previously listened to the wiretap recordings because Person A had played them for him. Santiago testified that if Respondent had told her that Person A had played wiretap recordings for him during an interview, Santiago would have rescheduled the official Department interview so that she could ascertain from Person A what was said at their meeting. After interviewing Respondent, Santiago prepared a report recommending that Respondent be issued a Schedule B Command Discipline (CD).

On cross-examination, Santiago confirmed that she was assigned to Group 21 which was one of the IAB Groups investigating the ticket-fixing scandal in July, 2011. IAB began investigating the scandal jointly with the Bronx DA before Santiago was assigned to the investigation. Santiago was aware that Katakofsky, who was assigned to IAB Group 22, was the lead investigator conducting this investigation. Santiago did not know if Katakofsky was the affiant for the eavesdropping wiretap and its subsequent applications.

Santiago confirmed that she had conducted many official Department interviews of subjects of the ticket-fixing scandal and that although in other interviews Santiago had to play wiretap recordings to refresh a subject's recollection, she did not have to do that at Respondent's official Department interview.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a seven year member of the Department who was assigned to the 46 Precinct for five years, is currently assigned to Patrol Borough Bronx. He estimated that he has made over 100 arrests during his career.

Respondent was a member of a team that had made arrests which resulted in federal gun charges which Person A was prosecuting. Respondent testified that Person A telephoned him sometime before July 7, 2011, and told him that she was calling because she was "just curious" and wanted to know if he was involved in the "ticket scandal" in the Bronx that she had read about in the newspaper. Respondent only told Person A that he was aware of the scandal. Respondent explained that he was aware that "a majority of" the MOS assigned to his command were being interviewed by IAB or testifying before grand juries regarding the ticket-fixing scandal. Respondent was also aware that the newspapers had reported that indictments regarding these allegations would be forthcoming. However, at the point in time when Person A telephoned him, Respondent had not been officially interviewed, or called to testify before a grand jury regarding the scandal. Respondent testified that for these reasons he told Person A that he was not personally involved in the scandal.

On July 7, 2011, Respondent went to the USAO accompanied by his attorney Craig Hayes to meet with Person A and another AUSA who was prosecuting a separate gun case which Respondent had been involved in. Respondent believed that the meeting

was "trial prep" for the gun cases that Person A and her colleague were prosecuting. Respondent testified that he had met with federal and local prosecutors to prepare for trial testimony on previous occasions. During the meeting, Person A asked him about ticket-fixing in general and also asked him whether he had ever personally attempted to fix a ticket. Respondent told Person A that he recalled doing so only once. He told her that he had attempted to fix a summons that had been issued to his sister-in-law's brother but that he had been unable to fix this summons. Respondent recalled that his inability to fix this summons resulted in a falling out with this family member and that he and his sister-in-law's brother "didn't speak for some time" after that.

When Person A asked whether he had attempted to fix any other tickets, Respondent told her that he could not recall any others. Person A then played a tape recording. Respondent recognized his voice discussing two other summonses he had tried to fix. One summons had been issued to him personally alleging a parking violation, and the other summons had been issued to a family friend for a violation that Respondent could not recall. After listening to the tape recording, Respondent recalled these two summonses and admitted to Person A that he had attempted to fix them.

Respondent testified that he and the two AUSAs then discussed the gun cases and they prepared him for upcoming hearings on these cases. Respondent was allowed to leave the meeting and was not detained. Respondent explained that he did not request that a patrol supervisor respond to the USAO because he did not believe that what had taken place during the meeting constituted an unusual police occurrence and he did not notify his supervisor or IAB about what had happened during the meeting because he believed that he was not legally obligated to do so. Respondent described the meeting as

similar to previous trial preparation sessions he had attended during which prosecutors had questioned him about his background and his disciplinary history. Respondent testified that he had never been instructed that he had to report to his supervisor or to IAB that a prosecutor had inquired about his background and his disciplinary history.

Respondent also testified that he believed the tape recording that Person A had played for him at the meeting had come from IAB because he was aware, based on press coverage, that the ticket-fixing scandal was being jointly investigated by IAB and the Bronx DA. Respondent anticipated that he would soon be the subject of an official Department interview regarding the two summonses he heard himself talking about on the tape recording that Person A had played for him. He eventually became the subject of such an official Department interview. When these charges and specifications were served on him, he was not placed on modified duty.

On cross-examination, Respondent agreed that although he had been involved in numerous trial preparation sessions, he had never previously entered into a proffer agreement with the prosecuting attorney as he did at this meeting. Respondent explained that he entered into the proffer agreement only after Person A demonstrated that she was aware that he had been involved in the ticket-fixing scandal. Respondent also agreed that no IAB personnel were present at USAO during his meeting with Person A on July 7, 2011 and that no one indicated that IAB had been, or would be, contacted about what had taken place at the meeting.

Respondent testified that his attempt to fix a summons for a family friend was unsuccessful because he mistakenly conveyed the wrong information to Payan. He agreed that he had attempted to prevent the processing and adjudication of that summons.

Respondent also admitted that when he called Payan to try to fix the parking summons that had been issued to his own car, his intent was to prevent the processing and adjudication of that ticket as well.

Respondent conceded that he did not know for certain that the tape recording that had been played for him by Person A had come from IAB and that he had assumed that Person A had obtained it from IAB based on the news coverage of the scandal. Person A never told him how she had obtained the tape recording.

During redirect-examination, Respondent explained that he believed he was entering into the proffer agreement with Person A based on USAO's own procedure that unless he did so they would not talk to him about the gun arrests.

Upon further questioning, Respondent testified that he could not recall whether Person A or anyone else told him that the proffer agreement would be or would not be disclosed to anyone outside the USAO. Respondent had no recollection that he or his attorney had asked Person A whether the proffer agreement might be disclosed to persons outside the USAO.

On further redirect examination, Respondent recalled that he testified in federal court at an evidentiary hearing held on October 20, 2011 regarding the gun case that Person A was prosecuting. Respondent further recalled that on cross-examination the defendant's attorney had questioned him about his involvement in the ticket-fixing scandal. As a result of that questioning, Respondent concluded that Person A had disclosed to the defendant's attorney the fact that Respondent had entered into a proffer agreement with the USAO regarding his involvement in attempting to fix tickets.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2012-6680

Respondent, having pleaded guilty, is found Guilty.

Disciplinary Case No. 2012-7147

Specification No. 1

It is charged that on July 7, 2011, Respondent failed and neglected to request the response of the patrol supervisor, precinct of occurrence, to the USAO after Respondent had been involved in an unusual police occurrence inside the USAO.

The issue presented by this charge is: Did the events that took place during Respondent's meeting at the USAO on July 7, 2011 constitute an unusual police occurrence?

In resolving this issue, Patrol Guide Procedure No. 212 09 "Unusual Occurrence Reports" is instructive. I find it significant that the purpose of this Procedure "is (t)o promptly notify the Chief of Patrol," not IAB, "of an unusual occurrence." "Unusual Occurrence" is defined as "substantially more than an ordinary occurrence because of its seriousness, peculiarities, sensationalism, vastness, differences, newsworthiness, or potential to affect police community relations involving interracial/ethnic conflict or community unrest."

This definition would not have placed Respondent on notice that his action of entering into a proffer agreement with an AUSA after being played a tape recording in which he is heard attempting to prevent the processing and adjudication of summonses clearly constituted an unusual police occurrence.

Moreover, under Patrol Guide Procedure No. 212-09, “(w)henever an unusual incident occurs” an MOS must “take immediate emergency action and: 1. Notify desk officer immediately. 2. Request patrol supervisor to respond” the Desk Officer must “3. Notify Operations Unit and patrol borough command without waiting for complete details. 4. Notify commanding officer/duty captain to respond”; and the “commanding officer/duty captain” must “5. Conduct immediate investigation of occurrence. 6. Inform Operations Unit and desk officer of details of investigation.”

The above actions required to be taken under Patrol Guide Procedure No. 212-09 would appear to be inapplicable to the factual situation presented here and, thus, would also not have placed Respondent on notice that AUSA Person A’s proffer action of granting Respondent immunity from prosecution regarding his upcoming testimony regarding a gun arrest he made constituted an unusual police occurrence. Also, it is not disputed that MOS are regularly granted immunity by prosecutors.

The Assistant Department Advocate (the Advocate) argued that the fact that AUSA Person A played a tape recording for Respondent on which he heard himself discussing fixing summonses itself constituted an unusual police occurrence. Although it is not unusual for a prosecutor to play a tape recording for a MOS during a pre-testimony “prep” session, generally the subject matter of the tape recording directly relates to the upcoming testimony. Although the tape recording that was played for Respondent here concerned his attempts to prevent the processing and adjudication of summonses, a matter unrelated to the subject matter of his upcoming testimony, I find that this did not transform the pre-testimony “prep” session into an unusual police occurrence.

It is recommended that Specification No. 1 be Dismissed.

Specification No. 2

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he provided information to the USAO regarding possible corruption or misconduct and he failed to report such disclosure to the Department.

The Advocate argued that because Respondent told AUSA Person A about a summons he had requested assistance in preventing the processing and adjudication of that he is not heard discussing on the tape recording that AUSA Person A played for him, Respondent was required to report to the Department what he had disclosed to AUSA Person A. The Advocate cited no previous disciplinary cases to support this argument.

The Advocate's position appears to be inconsistent with the charges brought in all of the other cases in which MOS have been charged with requesting assistance to prevent the processing and adjudication of summonses but have not been charged with failing to report their actions to the Department. Here, as in all of these other cases, at the point in time when Respondent made telephone calls requesting assistance to prevent the processing and adjudication of summonses, Respondent failed to self-report to the Department that he had engaged in possible corruption or misconduct. During his meeting with AUSA Person A, Respondent learned nothing more about his own actions than he already knew at the time he made these phone calls. Despite this fact, the Department has chosen to charge Respondent, but not other MOS similarly situated, with failing to self-report that he had engaged in possible corruption or misconduct. It seems unfair to charge Respondent with failing to disclose to the Department information which all of the other MOS who requested assistance to prevent the processing and adjudication

of summonses also possessed regarding their own possible corruption or misconduct and also did not disclose to the Department but were not charged with having failed to disclose.

Based on the above, it is recommended that Specification No. 2 be Dismissed. This recommendation is limited to the specific facts presented here. It is not inconceivable that under different circumstances an MOS could be found to have engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by providing information to a prosecutor regarding possible corruption or misconduct and failing to report the disclosure to the Department.

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

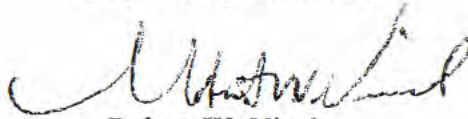
Under Disciplinary Case No. 2012-6680, Respondent has pleaded Guilty to having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department on two occasions by requesting the assistance of another member of the service to prevent the processing and adjudication of summonses issued to two motorists.

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 UMOS who have pleaded guilty to this charge.

Therefore, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. It is further recommended that Respondent forfeit 25 vacation days and 5 suspension days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED
AUG 22 2013

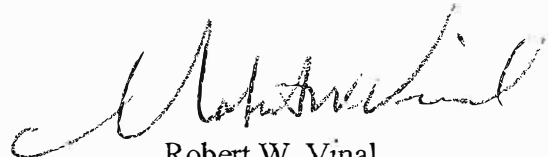
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER STEVEN LOPEZ
TAX REGISTRY NO. 938880
DISCIPLINARY CASE NOS. 2012-6680 & 2012-7147

Respondent received an overall rating of 4.5 on his 2012 performance evaluation, 4.5 on his 2011 evaluation, and 4.0 on his 2010 evaluation. He has been awarded six Meritorious Police Duty medals and 23 Excellent Police Duty medals. He has never been designated Chronic Sick and he has no monitoring records. He has no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials