



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

CHAN

December 17, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Jorge Rodriguez**  
Tax Registry No. 918237  
25 Precinct  
Disciplinary Case No. 2010-3237

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on November 29, 2011 and was charged with the following:

**DISCIPLINARY CASE NO. 2010-3237**

1. Said Sergeant Jorge Rodriguez, assigned to the 25<sup>th</sup> Precinct, on or about October 6, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Rodriguez signed and approved a Supporting Deposition and a Property Clerk Invoice that contained inaccurate information.

**P.G. 203-10, Page 1, Paragraph 5**

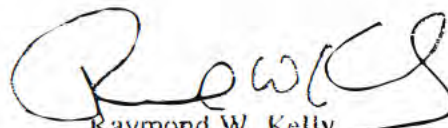
**PUBLIC CONTACT – PROHIBITED  
CONDUCT**

2. Said Sergeant Jorge Rodriguez, assigned to the 25<sup>th</sup> Precinct, on or about October 6, 2009, failed to make complete entries in his Activity Log, as required.

**P.G. 212-08, Page 1, Paragraph 1**

**ACTIVITY LOGS  
COMMAND OPERATIONS**

In a Memorandum dated March 15, 2012, Assistant Deputy Commissioner David S. Weisel found Sergeant Rodriguez Guilty of Specification Nos. 1 and 2, in Disciplinary Case No. 2010-3237. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. As a veteran member of the service and a supervisor, Respondent Rodriguez should have ensured that the documents were properly and accurately prepared prior to signing and approving them. Therefore, a greater penalty is merited. Sergeant Rodriguez is to forfeit thirty-five (35) vacation days, as a disciplinary penalty regarding this matter.

  
Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

March 15, 2012

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Jorge Rodriguez  
Tax Registry No. 918237  
25 Precinct  
Disciplinary Case No. 2010-3237

The above-named member of the Department appeared before the Court on November 29, 2011, charged with the following:

1. Said Sergeant Jorge Rodriguez, assigned to the 25th Precinct, on or about October 6, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Sergeant Rodriguez signed and approved a Supporting Deposition and a Property Clerk Invoice that contained inaccurate information.

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

2. Said Sergeant Jorge Rodriguez, assigned to the 25th Precinct, on or about October 6, 2009, failed to make complete entries in his Activity Log, as required.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS  
COMMAND OPERATIONS

The Department was represented by Joanne Watters, Esq., Department Advocate's Office. Respondent was represented by John D'Alessandro, Esq., The Quinn Law Firm.

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.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Damien Banks, Police Officer Benjamin Bellingeri, and Sergeant Joseph White as witnesses.

Police Officer Damien Banks

Banks, a seven and-a-half year member of the Department, was assigned to the 25 Precinct Street Narcotics Enforcement Unit (SNEU). He recalled that on October 6, 2009, he was working in a van with Respondent and Police Officer Benjamin Bellingeri. Banks and Respondent entered a park located between East 129th Street and East 130th Street in Manhattan after observing several individuals smoking what appeared to be crack cocaine. Banks observed one individual, Person A, drop a crack stem to the ground. He saw a broken crack stem on the ground and notified Respondent. Banks believed Respondent was standing to his left at this time.

Banks testified that Respondent used the flap of a manila envelope to scoop up the crack stem. Respondent closed and sealed the envelope, and held onto it.

Following the collection of the stem, the officers escorted the prisoners to the prisoner van. They were taken to the 25 Precinct station house, where their arrests were processed.

Banks testified that he processed Person A's arrest paperwork. Banks prepared the Possession of a Controlled Substance Supporting Deposition (Department's Exhibit [DX] 1; DX

6 as exemplar). This form stated that it had to be filled out by the “recovering officer.” Banks also prepared the Supplemental Fact Sheet (DX 2; DX 7 as exemplar). On the latter form Banks indicated that he observed Person A smoking crack and recovered a stem containing crack cocaine. Both Banks and Respondent signed the paperwork.

Banks testified that because it was actually Respondent that recovered the stem, both the Supporting Deposition and Supplemental Fact Sheet contained inaccurate statements. On August 11, 2011, Banks pleaded Guilty in the Trial Room to improperly filling out the arrest paperwork and making “improper memo book entries.” He forfeited 30 vacation days for this misconduct.

On cross examination, Banks confirmed that it was accurate when he stated in the paperwork that he observed Person A smoking crack. The only inaccuracy was the one concerning the recovery of the crack stem. He first noticed the inaccuracy as he was preparing to testify in court, and he immediately brought the matter to Respondent’s attention. Respondent advised Banks to contact the District Attorney’s Office (DA) right away, and that is what Banks did.

Police Officer Benjamin Bellingeri

Bellingeri had been assigned to the 25 Precinct. On October 6, 2009, he worked with Respondent, Banks, and Police Officer Edgar Ciar. Bellingeri drove the prisoner van to a park along Harlem River Drive, between 128th and 130th Streets. He stayed in the van with two prisoners while the other officers exited the van and entered the park. Bellingeri did not observe Person A’s apprehension, but he subsequently was assigned to be the arresting officer. Bellingeri transported the prisoners to the station house, where he prepared the arrest paperwork with Banks’s assistance.



Bellingeri prepared the Property Clerk Invoice (DX 3) for the crack stem. He relied on the Supporting Deposition to prepare this voucher. He indicated on the voucher that Banks was the finder of the property. Both Bellingeri and Respondent signed the voucher.

On cross examination, Bellingeri confirmed that the 25 Precinct SNEU team made approximately six arrests every "night."

Sergeant Joseph White

White was assigned to the Internal Affairs Bureau. He came to investigate this matter after receiving a call from Assistant District Attorney (ADA) Person B of the Official Corruption Unit of the DA's Office. Person B's allegation was that supporting depositions filed by the 25 Precinct SNEU team had "improper information on them." This report was forwarded from Lauren Angelo, the ADA assigned to Person A's case.

Person A was charged with Criminal Possession of a Controlled Substance in the Seventh Degree. According to the criminal court complaint (DX 4), Banks recovered a crack stem from the ground.

White testified that the criminal case against Person A was ultimately dismissed. Person B and Angelo told White that the dismissal was due to the paperwork errors, as well as to the fact that Banks did not appear at their office after several notifications. They said that the case was dismissed on speedy trial grounds (Criminal Procedure Law § 30.30, or "30.30," which generally allows the People 90 days to have a misdemeanor case ready for trial). Person C, the chief of the DA's Narcotics Bureau, however, told White that while the 30.30 date had not actually expired, he decided "in January," after speaking to Banks and Respondent, that "due to the

minimal nature of the charges and the complexities that would be added by the errors, . . . it wasn't a good use of his office's resources to continue with the prosecution."

On cross examination, White confirmed that nothing in his investigation contradicted the fact that Banks observed Person A throw the crack stem to the ground, Banks pointed the stem out to Respondent, and Respondent picked up the stem and turned it over to Banks. White clarified that, according to Person C, had the charges against Person A been more substantial, the prosecution would have proceeded in spite of the "clerical error."

#### Respondent's Case

Respondent testified on his own behalf.

#### Respondent

Respondent, a 15-and-a-half-year member of the Department, was assigned to the 25 Precinct. Between 2004 and 2010, he was a SNEU supervisor. During that period, his SNEU team made 500 to 700 arrests each year. On average, five pieces of paperwork were generated for each arrest. Respondent was responsible for reviewing that paperwork.

Respondent asserted that an Activity Log was used as a reminder. He explained, "Stuff that's normally put in there is any change of assignment, any encounters, any dealings we have in the streets with individuals. Things that normally would not generate paperwork." If there was an arrest, he would not put that in his memo book because he could refer to the arrest paperwork for the details. Although Respondent made Activity Log entries regarding the six arrests made by the SNEU team on October 6, 2009, he explained that those entries were not



extensive because arrests generate a lot of paperwork. In addition, all arrests were recorded in a log that was kept in the SNEU office (see DX 6, SNEU arrest log for Oct. 6, 2009).

DX 5 was Respondent's Activity Log for October 6, 2009. Respondent noted that at 0630 hours, he was present for duty on a SNEU assignment. At 1025, he was out on patrol. At 1310, he was present at the 25 Precinct station house with six "perps."

Respondent testified that on the date in question, he was called over by Banks after Banks believed he saw two individuals smoking crack inside a park that was known for drug activity. As Respondent and Banks approached the individuals, Respondent observed Person A throw a crack pipe to the ground. As the officers frisked the apprehended individuals, Banks pointed out to Respondent the crack stem on the ground. Respondent picked up the stem and held on to it until they returned to the station house. Once there, Respondent turned the stem over to the arresting officer. He subsequently signed off on all the arrest paperwork.

Respondent was aware that he was charged by the Department with "essentially missing the error" in Banks's paperwork "that he was the recoverer of the crack pipe." Respondent "did not notice that" when signing off on the paperwork. He explained, "I was very busy that night. I had many arrests, many paperwork to review. . . . I'm regrettably sorry for that mistake obviously, but I did not catch it, no."

Respondent's Exhibit (RX) A was his Background Information Report, dated March 25, 2011. Respondent's commanding officer (CO) rated him 10 on a scale from 0 to 10. The CO called Respondent an exemplary leader and noted that he has "consistently exhibited outstanding performance."

RX B was a '49', dated November 3, 2008, in which Respondent's CO recommended that Respondent be promoted to sergeant special assignment. The CO noted that Respondent

was “the epitome of what a frontline supervisor should be; his greatest asset is decision making. He can always be counted on to make intelligent, practical decisions.”

RX C consisted of Respondent’s annual performance evaluations. He received an overall rating of 5.0 “Extremely Competent” in 2004 and 2005. He was rated 4.5 “Extremely Competent/Highly Competent” in 2007, 2008, 2009, and 2010.

On cross examination, Respondent confirmed that on the date in question, he did not make any Activity Log entries to indicate what the SNEU team did that day. He did not indicate when or where the arrests occurred, or the names of the arrestees.

On re-direct examination, Respondent testified that arrest times were recorded in the SNEU arrest log and on the arrest paperwork.

On re-cross examination, Respondent confirmed that certain information, such as the prisoners’ names and arrest locations, were entered in the arrest log by other members of the service.

Upon questioning by the Court, Respondent explained that the arresting officer usually entered information in the arrest log. For Person A’s arrest, no information was entered under the column entitled “Recovering MOS.” There were other blank spaces in the arrest log; Respondent could not explain this.

Respondent could not say why he did not fill out the supporting deposition himself. Banks did not get credit for activity by making the observations and filling out the supporting deposition.



FINDINGS AND ANALYSISSpecification No. 1

The facts in this case are mostly undisputed. On October 6, 2009, Respondent was the supervisor of the 25 Precinct Street Narcotics Enforcement Unit. Other officers were also present, including Banks and Bellingeri. The team went to a park, where both Respondent and Banks observed several individuals engaging in drug activity. They both observed a subject, Person A, smoking what appeared to be crack cocaine. Both Respondent and Banks observed Person A drop a crack stem to the ground. Banks then observed Respondent pick up the pipe and place it into an envelope. Person A was arrested, along with a second subject, Person D.

The case was prepared for arraignment by a pre printed supporting deposition. Banks filled out the Supporting Deposition (DX 1) as the informant for the criminal complaint itself (DX 4). The form required him to fill in information and check off boxes. To complete this part of the form, it provided the following information: “[NOTE: YOU MUST BE THE RECOVERING OFFICER . . . ]” Banks checked off the box indicating a crack pipe or stem, under the pre-printed sentence, “I recovered the followed item(s) which the defendant had possessed” (emphasis in original). In space left for handwriting labeled, “I RECOVERED,” “DRUG RECOVERED,” and “RECOVERED FROM,” Banks wrote, “1-stem of crack residue,” and “the ground where I saw defendant drop it.” On the Supplemental Fact Sheet (DX 2), Banks wrote, “Defendant was observed smoking crack w/co defendant Person D in open view and public place. I recovered a stem containing crack residue from the ground where I saw defendant Person A drop it.” DX 6 and 7, blanks of each of these forms, were admitted as exemplars.

Bellingeri was assigned as the arresting officer. On the Property Clerk Invoice (DX 3), Bellingeri listed Banks as "Finder of Property." The paperwork was forwarded to the Manhattan Court Section. The criminal complaint (DX 4) stated that the deponent, a police officer assigned to the Manhattan Court Section, was informed by Banks's "supporting deposition(s)" that Banks "recovered a pipe/stem containing crack/cocaine residue from ground" where Banks "observed the defendant drop it." The supporting deposition, supplemental fact sheet, and voucher were all signed and approved by Respondent as supervisor.

Banks noticed the inaccuracy while preparing to testify in the case and notified Respondent. Respondent told Banks to tell the DA's Office. The case was reviewed by the Official Corruption Unit of the DA's Office, who concluded that the mistake was nothing more than a "clerical error." The People nevertheless dismissed the case due to the minor nature of the charge and a judgment that going forward and having to amend the pleadings and explain the discrepancy was not worth it.

Banks pleaded Guilty to similar charges and agreed to a recommended penalty of the forfeiture of 30 vacation days (see Case No. 2011-3176). The Police Commissioner approved the disposition on January 24, 2012.

It is charged that Respondent engaged in conduct prejudicial when he "signed and approved a Supporting Deposition and a Property Clerk Invoice that contained inaccurate information." At trial, the Department alleged that the forms were inaccurate because Banks indicated that he "recovered" the pipe, when it was actually Respondent that did so. Respondent contended that the forms were not inaccurate. Even though he picked up the pipe using an envelope, Banks was working with him on the same team, and observed him pick up the pipe



and place it into the envelope. In that sense, Respondent argued, Banks recovered the pipe just as much as Respondent did.

The Court rejects Respondent's argument. He should have known, from the forms' emphasis on who recovered the contraband, that it was essential that the officers be extremely precise with regard to who picked up the crack stem and took it into evidence. This was an important piece of information, not only for chain-of-custody purposes but because the People would need to demonstrate these details to the finder of fact at a trial. In fact, both Banks and Respondent recognized this during preparation with the DA's Office and were aware that they had made a mistake. The fact that Banks observed Person A in possession of the stem, and Respondent recover the stem, did not allow Banks to swear that he recovered the stem. The officers may work as a team, but they cannot swear to facts as a team.

Moreover, although the Property Clerk Invoice is not a sworn document, officers still must ensure that they are filled out correctly. Banks was not the "finder" of the crack stem just because he also observed it. Respondent was the finder of this property.

As such, the Supporting Deposition and Property Clerk Invoice "contained inaccurate information." Accordingly, Respondent is found Guilty of Specification No. 1.

#### Specification No. 2

The second specification charges that Respondent "failed to make complete entries in his Activity Log." For his October 6, 2009, memo book entry, Respondent noted that he began his tour at 0630 hours with the 25 Precinct SNEU team. He was out on patrol at 1025, and returned to the command with six prisoners at 1310. He ended his tour at 2022, making 4 hours and 55 minutes of overtime. The Department argued that Respondent's Activity Log did not include the

other members of the SNEU team, or their “activities as to any observations which related to any of the arrests conducted by the team.” Specifically, the entry did not indicate “Respondent’s recovery of drugs from an arrest during that tour” or “relate to any information regarding” the times of the arrests or the names of the arrestees. Respondent argued that he was not required to list every detail, but did put down enough information to allow him to refresh his memory. He testified that he could look at the arrest paperwork for October 6, 2009, to remind him what occurred.

What is insufficient here is the fact that Respondent failed to state that he recovered the crack stem from Person A. Respondent conceivably could have referred to, for example, the command log or SNEU arrest log to look up the arrestees for October 6, 2009. But he had no other way of remembering, other than his own memory, the fact that it was he and not Banks that picked up the stem from the ground and held onto it until it was vouchered. Thus, because Respondent “failed to make complete entries in his Activity Log,” he is found Guilty of Specification No. 2.

#### 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 July 18, 1996. 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 signing arrest paperwork that contained “inaccurate” information. He was the supervisor of a SNEU team. Both Respondent and one of



the Police Officers on the team, Banks, observed an individual, Person A smoking what appeared to be a crack stem. Both observed Person A drop the stem to the ground. Both observed Respondent pick up the stem and place it into a safekeeping envelope. Banks, however, filled out the supporting deposition used to create the accusatory instrument in this case. That supporting deposition called for him to be the “recovering officer.” Here, Respondent was the recovering officer, so the document was inaccurate. Respondent also failed to indicate in his Activity Log that he recovered property or contraband from Person A.

The Department recommended a penalty of 30 vacation days. This case, however, is different from others in which such a penalty was given. In *Case No. 85671/09* (Sept. 2, 2011), 30 days’ forfeiture was imposed upon a 19-year officer. The officer had one prior adjudication for throwing away fake marijuana during an integrity test, and for failing to safeguard his firearm at his residence. He also had several chronic sick periods in his career. In *85671/09*, the officer was assigned as the arresting officer on a driving while intoxicated case. He did not observe the driver show signs of intoxication while behind the wheel, but, due to carelessness, signed a criminal complaint stating that he did observe this. He should have written that he was informed by another officer that the driver showed such signs.

In contrast, in *Case No. 84684/08* (Apr. 20, 2010), a probationary police officer created an inaccuracy that contains elements of both *85671/09* and Respondent’s case. The officer was assigned an arrest in which another member of the service apparently had observed an individual in possession of a marijuana cigarette. The officer filled out a supporting deposition, similar to the one in the instant case, and checked off that he had observed the arrestee in possession of the cigarette. The officer received a penalty of 10 vacation days. The trial commissioner noted that



the officer was new to the arrest process and received no guidance from the supervisor on duty. There was no intent to mislead.

Every case needs to be evaluated on its own unique merits. The Court recognizes that the Department has a deep and abiding interest in ensuring that sworn documents submitted by members of the service are accurate. In some cases involving inaccurate criminal court complaints and other police paperwork, penalties have been more substantial than what has been proposed by the Department in this case. See Case No. 2009-0531 (May 24, 2011) (30 days and dismissal probation for 17 year officer with no record who, as assigned arresting officer, filled out arrest paperwork stating that he found a knife in juvenile's shorts pocket; in fact, another officer found the knife, and it was under a garbage can in a bathroom juvenile had entered). All of this suggests that each case requires its own analysis and, because the circumstances can vary greatly, the penalty range may be broad.

Here, it should be noted that Banks and Respondent observed the crime and either could have attested to the operative facts: Person A was in possession of a crack stem and it was recovered from the ground beneath his feet. It is conceivable that a criminal court information could have been drafted based solely on the observations of either Respondent or Banks. Either could have sworn that he observed Person A smoking what appeared to be crack cocaine, and that Person A was found in possession of a crack stem in that the officer saw him drop it and saw it at his feet.

Instead, the pre-printed supporting deposition method was used. There was no testimony as to why the case was prepared in this way. It appears, however, to have been done by agreement between the Department and the DA's Office to eliminate the necessity of conferring with an ADA on simple, large-volume arrests like misdemeanor observation drug possessions.



Because the form called for it to be filled out by a police officer or detective, and for it to be signed by a supervisor, Respondent could not have filled it out himself.

Moreover, while calling Banks the recoverer of the crack stem was erroneous legally, it fell within the common usage of that kind of language. For example, in a situation where two people see something on the ground and one picks it up in the presence of the other, either might say, "We found this." While this would be insufficiently precise as a legal matter, it is far from "untrue" in terms of how people speak.

Respondent's misconduct regarding his Activity Log entry relates to the same mistake that was in the supporting deposition and associated paperwork: that Banks could be listed as the recovering officer even though it was Respondent that recovered the contraband. Most Activity Log cases involve a complete failure to note any activity, but as Respondent did write down information about his activity, the violation here is "highly technical," see Case No. 84900/09, p. 32 (May 13, 2010).

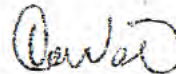
The Court is cognizant of the fact that Banks pleaded Guilty to similar charges and specifications, and a penalty of 30 vacation days has been imposed. It normally is expected that a supervisor will receive a greater penalty than a subordinate for misconduct relating to the same facts. Here, however, the facts were developed fully at Respondent's trial and those facts do not warrant a penalty similar to the one that Banks received after a knowing, voluntary and intelligent plea.

In sum, the inaccuracies here were insubstantial and did not constitute an intentional misrepresentation. The inaccuracies were due to a misunderstanding of what was meant by the term "recovering officer." These mistakes were not as minor as a "typographical error," as counsel would have it, but neither did they arise from laziness or sloppiness. Respondent did not

and could not have benefited from this act. It was Respondent and Banks that, according to the Department's case, brought the error to the attention of the DA's Office. Moreover, the operative allegation against Person A in the complaint was accurate and that conduct had been witnessed by both Respondent and Banks. Respondent is an active officer with an excellent work record, as shown specifically by his commanding officer's admiring words in the request for Respondent's promotion to sergeant special assignment.

For all of these reasons the Court recommends that Respondent forfeit 10 vacation days as a penalty.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner – Trials





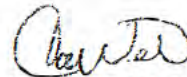
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT JORGE RODRIGUEZ  
TAX REGISTRY NO. 918237  
DISCIPLINARY CASE NO. 2010 3237

Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last three annual performance evaluations. He has been awarded seven medals for Excellent Police Duty. [REDACTED]

[REDACTED]. Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner Trials