OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

CHAN

April 4, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Jesus Capo**
Tax Registry No. 926640
Manhattan Court Section
Disciplinary Case Nos. 2010-3388, 2011-4504,
2011 5028 & 2011-5986

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on November 14, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-3388

1. Said Detective Jesus Capo, while assigned to Manhattan South Vice Enforcement, while on-duty, on or about November 10, 2010, within the confines of Manhattan South Vice Enforcement, in New York County, was discourteous to New York City Police Sergeant Daniel Mangome, Tax #897945 and New York City Police Sergeant Gregory Butler, Tax #901154, to wit: said Detective used profane language against both Sergeants.

P.G. 203-09, Page 1, Paragraph 2 — **PUBLIC CONTACT – GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-4504

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Division, on or about December 17, 2009 and December 18, 2009, at a location known to this Department, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective gave inaccurate testimony during a Criminal Court trial relating to the recovery and vouchering of a quantity of United States Currency.

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

DISCIPLINARY CASE NO. 2011-4504 **DETECTIVE JESUS CAPO**

2. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about December 17, 2009, and December 18, 2009, at a location known to this Department, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 **ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE**

DISCIPLINARY CASE NO. 2011-5028

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Squad, on or about February 6, 2010, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective signed two (2) Criminal Court Complaints that contained factually inaccurate information.

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

2. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about February 6, 2010, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective caused two (2) Criminal Court Complaints that contained factually inaccurate information to be filed with Bronx County Criminal Court.

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

3. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about February 6, 2010, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 **ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE**

DISCIPLINARY CASE NO. 2011-5986 **DETECTIVE JESUS CAPO**

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Squad, on or about November 10, 2010, within the confines of Bronx County, having been given a lawful order by New York City Police Lieutenant Karen Anderson to obtain a final disposition of a summons issued to a Department vehicle that was utilized by said Detective, he wrongfully and without just cause refuse [sic] to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2 **COMPLIANCE WITH ORDERS**

In a Memorandum dated February 27, 2013, Assistant Deputy Commissioner Robert W. Vinal found the Respondent Guilty of Specification No. 1 in Disciplinary Case No. 2010-3388; Guilty of Specification No. 1, and Dismissal of Specification No. 2, in Disciplinary Case No. 2011-4504; Guilty of Specification Nos. 1 & 2, and Dismissal of Specification No. 3, in Disciplinary Case No. 2011-5028; and Guilty of Specification No. 1, in Disciplinary Case No. 2011-5986. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Capo's various acts of misconduct warrant a greater penalty. Therefore, Police Officer Capo shall forfeit twenty (20) suspension days to be served, forty-five (45) vacation days, and one (1) year dismissal probation, as a disciplinary penalty.

Raymond W. Kelly
Police Commissioner

The City of New York

POLICE DEPARTMENT

February 27, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Jesus Capo
Tax Registry No. 926640
Manhattan Court Section
Disciplinary Case No. 2010-3388, 2011-4504,
2011-5028 & 2011-5986

The above-named member of the Department appeared before me on November 14, 2012, charged with the following:

Disciplinary Case No. 2010-3388

1. Said Detective Jesus Capo, while assigned to Manhattan South Vice Enforcement, while on-duty, on or about November 10, 2010, within the confines of Manhattan South Vice Enforcement, in New York County, was discourteous to New York City Police Sergeant Daniel Mangome, Tax #897945 and New York City Police Sergeant Gregory Butler, Tax #901154, to wit; said Detective used profane language against both Sergeants.

P.G. 203 09, Page 1, Paragraph 2 PUBLIC CONTACT GENERAL REGULATIONS

Disciplinary Case No. 2011 4504

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Division, on or about December 17, 2009 and December 18, 2009, at a location known to this Department, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective gave inaccurate testimony during a Criminal Court trial relating to the recovery and vouchering of a quantity of United States Currency.

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

2. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about December 17, 2009 and December 18, 2009, at a location known to this Department, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE

Disciplinary Case No. 2011-5028

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Squad, on or about February 6, 2010, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective signed two (2) Criminal Court Complaints that contained factually inaccurate information.

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

2. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about February 6, 2010, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective caused two (2) Criminal Court Complaints that contained factually inaccurate information to be filed with Bronx County Criminal Court.

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

3. Said Detective Jesus Capo, while assigned as indicated in Specification #1, on or about February 6, 2010, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE

Disciplinary Case No. 2011-5986

1. Said Detective Jesus Capo, while assigned to Bronx Vice Enforcement Squad, on or about November 10, 2010, within the confines of Bronx County, having been given a lawful order by New York City Police Lieutenant Karen Anderson to obtain a final disposition of a summons issued to a Department vehicle that was utilized by said

Detective, he wrongfully and without just cause refuse [sic] to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

The Department moved to dismiss Specification No. 2 in Disciplinary Case No. 2011-4504 and Specification No. 3 in Disciplinary Case No. 2011-5028. Respondent, through his counsel, entered a plea of Not Guilty in Disciplinary Case No. 2011-5986. Respondent, through his counsel, entered pleas of Guilty to the remaining charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-3388

Respondent, having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011-4504

Respondent, having pleaded Guilty, is found Guilty of Specification No. 1. Specification No. 2 is Dismissed.

Disciplinary Case No. 2011-5028

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 and 2. Specification No. 3 is Dismissed.

Disciplinary Case No. 2011-5986

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Karen Anderson as its sole witness.

Lieutenant Karen Anderson

Anderson testified with regard to Disciplinary Case No. 2011-5986. Anderson, who was assigned to the Bronx Vice Enforcement Squad from October, 2010 until October, 2012, recalled that early in November, 2010, the Commanding Officer of the Bronx Vice Enforcement Squad ordered her to investigate a parking summons that had been issued on February 19, 2010, to a Department vehicle that Respondent had used that day while he was still assigned to the Bronx Vice Enforcement Squad. The summons had been issued for parking next to a fire hydrant.

Anderson recalled that the summons plea form that Respondent had submitted regarding this summons had been rejected by the Chief of Department's Office which had sent a memorandum to the Bronx Vice Enforcement Squad which stated fire hydrant summonses were no longer accepted by the Chief of Department's Office, that Respondent had not established a valid verifiable defense, and that the summons would "have to be handled by the command." Anderson testified that she telephoned the Chief of Department's Office and spoke to a sergeant there about the summons. The sergeant informed her that "the MOS was responsible to pay for it."

On November 10, 2010, Anderson telephoned Respondent at his newly assigned command, Manhattan South Vice Enforcement Squad. She informed him that the

summons plea form that he had submitted had been denied and that he was "responsible to pay the summons." She recalled that Respondent "pretty much" told her, "It's not my concern right now, and I'm not paying for anything.'" She told him that according to the Interim Order (Interim Order 73 of 2009), he "would be responsible ultimately for paying the summons." She requested that Respondent provide her with a copy of his memo book entry for February 19, 2010. He told her that "it wasn't available right now."

On cross-examination, Anderson agreed that it is common that members of the service get summonses on Department vehicles and that this occurs on a daily basis. She also agreed that if a summons is issued to a Department vehicle which is being used by a MOS who is legitimately performing lawful duties, the MOS can be excused from any liability for the summons by submitting a summons plea form containing a valid verifiable defense. The summons plea form is forwarded to the Chief of Department's Office. Anderson confirmed that prior to her conversation with Respondent she had never ordered any MOS to pay for a parking summons. Anderson also confirmed that during her telephone conversation with the sergeant who worked in the Chief of Department's Office, she asked the sergeant if there was "a written policy in place, where he (Respondent) would be responsible to pay the summons." She was told "there was nothing written." Anderson agreed that subsequent to her conversation with Respondent a written policy was promulgated in the form of an Interim Order.

Anderson further agreed that Respondent had promptly submitted a summons plea form regarding the parking summons to his command and that the Commanding Officer of the Bronx Vice Enforcement Squad had approved and signed off on that Respondent's summons plea form. Anderson confirmed that the Chief of Department's Office

memorandum to the Bronx Vice Enforcement Squad stated that fire hydrant summonses were "no longer being accepted." Anderson agreed that this language implied that fire hydrant summonses previously had been accepted. Anderson had never previously seen a summons returned based on a claim that fire hydrant summonses were no longer being accepted.

Anderson confirmed that the Chief of Department's Office memorandum to the Bronx Vice Enforcement Squad stated only that the summons must be handled by the command and that the attached endorsements by the Commanding Officer of the Vice Enforcement Division and the Chief of the Organized Crime Control Bureau also only stated that the summons must be handled by the command. Anderson agreed that none of these endorsements stated that the summons must be paid by the MOS who had parked the vehicle that the summons was issued to.

Anderson agreed that when she telephoned Respondent at Manhattan South Vice Enforcement Squad on November 10, 2010, this would have been the first time that anyone had informed him that the summons plea form that he had submitted regarding the summons that had been issued to him on February 19, 2010, while he was assigned to the Bronx Vice Enforcement Squad, had been denied and that he was personally responsible to pay the summons. She confirmed that when Respondent expressed to her that he did not have time to deal with the summons issue at that moment, she was not aware that he had just worked a 16-hour tour and had made numerous arrests while executing search warrants that day.

She confirmed that she had no follow-up conversations with Respondent and she never showed him or sent him the Chief of Department's Office memorandum to the

Bronx Vice Enforcement Squad, or the endorsements by the Commanding Officer of the Vice Enforcement Division and the Chief of the Organized Crime Control Bureau, or the memorandum she prepared. Although the sergeant who worked in the Chief of Department's Office had told her that Respondent was "required to get a money order and go to Gold Street and pay the summons," she never relayed this information to Respondent during their conversation on November 10, 2010, or at any other time.

On redirect examination, Anderson confirmed that when she telephoned Respondent on November 10, 2010, she identified herself to him as "Lieutenant Anderson from Bronx Vice."

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, who has been assigned to Manhattan Court Section for the past two years, testified that he has been on modified assignment since November 10, 2010. Prior to November 10, 2010, when he was on full duty, he was an extremely active member. [Respondent's Exhibit (RX) A is a "Recommendation for Promotion to Detective Second Grade" letter written on January 9, 2010, by Captain Lorenzo Johnson, Commanding Officer, Bronx Vice Enforcement Squad. In this letter, Captain Lorenzo Johnson notes that Respondent had made a total of 670 arrests and had averaged over 104 arrests per year.]

Regarding Disciplinary Case No. 2011-5986, Respondent testified that while he was on-duty on February 19, 2010, he drove a confidential informant (CI) in an unmarked Department vehicle to Bronx Criminal Court so that the CI could swear to representations contained in two applications for search warrants that were going to be presented to a judge to be signed. Because Respondent needed to keep the CI's identity secret and because the CI was fearful that he might be spotted when he got out of the unmarked Department vehicle, Respondent parked the car in a secluded area near the Courthouse in front of a fire hydrant. Respondent testified that he and the CI then exited the car and entered the Bronx DA's office together. When Respondent returned to the car, he observed a summons for illegal parking on the windshield. Respondent testified that he had never previously received a summons on a Department vehicle. Respondent prepared and submitted a summons voidance form which was signed by his commanding officer.

On November 10, 2010, Respondent was on-duty and assigned as the arresting officer regarding the execution of a search warrant. While Respondent was at Manhattan South Vice Enforcement Squad processing arrests made during the execution of the search warrant, he received a telephone call from Anderson. He had never met, heard of or spoken to Anderson previously. She referred to the summons that he had received when he was assigned to Bronx Vice Enforcement Squad and told him, "You're responsible. Do you want to pay for the summons?" Respondent testified that he responded that because he was doing police work when he received the summons and because he had submitted a voidance form he should not have to pay for the summons. Their conversation, which had lasted no more than two minutes, then ended. Respondent

testified that he did not interpret what Anderson said to him as an order that he personally pay the summons. He had never heard of a MOS being required to pay for a parking summons received while doing police work.

The next time that Respondent heard anything about this summons after his conversation with Anderson on November 10, 2010, was in the spring of 2012, when he was presented with a Command Discipline (CD) requiring that he lose two vacation days. He refused to sign this CD.

Regarding Disciplinary Case No. 2010-3388, Respondent admitted that on November 10, 2010, he was discourteous to Sergeants Mangome and Butler. Respondent testified that when Mangome approached him he was tired and cranky because he had been working for 16 hours. As a result, when Mangome asked him, "What are you still doing here?" and then told Respondent that he would be receiving a CD because he had not yet made required entries in his memo book, and further told Respondent, "If you don't care, I don't care," a frustrated Respondent "got bent out of shape" and told Mangome, "This is bullshit." Respondent further admitted that although Butler had merely asked him, "What are you cursing for?" he responded by telling Butler to "get your hands out of my face."

With regard to Disciplinary Case No. 2011-4504, Respondent recalled that on April 16, 2008, the Bronx Vice Enforcement Squad conducted four operations by raiding four gambling locations. Various amounts of cash were recovered at all four locations. $348.00 that had been recovered at one of the locations was vouchered under the name of a defendant who had been arrested at a different location. As a result of this paperwork mix-up, Respondent admitted that on December 17 and 18, 2009, he gave inaccurate

testimony during a Bronx County criminal trial regarding the recovery and vouchering of cash that had been recovered at [redacted].

Regarding Disciplinary Case No. 2011-5028, Respondent admitted that he had signed two Criminal Court Complaints that contained factually inaccurate information. These two Criminal Court Complaints were then filed with Bronx County Criminal Court. Respondent testified that on February 5, 2010, at 1520 hours, the Bronx Vice Enforcement Squad simultaneously executed two search warrants: one at [redacted] the Bronx; and one at [redacted], the Bronx.

Inside [redacted] Person B was arrested. Person A was arrested outside the building. The original complaint that Respondent signed as Deponent regarding the arrests of Person B and Person A stated that "Deponent further states that he asked defendant Person A if he lived inside said apartment and defendant Person A stated in sum and substance YEAH I LIVE THERE." (RX B) Respondent testified that Person A did not make this statement to him. Rather, Person A had made this statement to Detective John Zerafa who informed Respondent that Person A had said this. Respondent testified that he met with an Assistant District Attorney (Asst. D.A.) shortly after the Person B and Person A complaint had been filed. He reviewed the complaint, noticed the error and alerted the Asst. D.A. about the error. A superceding complaint was prepared by the Asst. D.A. to replace the original inaccurate complaint. The superceding complaint accurately stated that Person A's statement that he lived inside said apartment had been made to Zerafa who had informed Respondent about Person A's statement (RX C).

The search warrant that was executed at [redacted], the Bronx, resulted in the arrests of Person C and Person D. The original complaint (RX D) that Respondent signed as Deponent regarding Person C and Person D contains the statement: "Deponent further states that he observed defendants acting in concert, in that both defendants were standing behind the store counter at said location." Respondent testified that he did not personally observe Person C and Person D standing behind the store counter. Rather, Person C and Person D were observed standing behind the store counter by Detective Joshua Vanderpool who informed Respondent that he had seen them there. When he met with the Asst. D.A. shortly after this complaint was filed, he reviewed the complaint, noticed the error and alerted the Asst. D.A. about the error. A superceding complaint was prepared by the Asst. D.A. to replace the original inaccurate complaint. The superceding complaint accurately stated that Vanderpool had informed Respondent that he had observed Person C and Person D standing behind the store counter.

On cross-examination, regarding Disciplinary Case No. 2011-4504, Respondent recalled that during his December 17, 2009, testimony regarding whether money was recovered during the raid at [redacted] he did not have any evidence voucher with him to reference or refresh his recollection. Because his post-testimony examination of the arrest paperwork did not show that any money was recovered, he unknowingly gave inaccurate testimony the next day, December 18, 2009, when he testified that no cash was recovered inside [redacted].

On cross-examination, regarding Disciplinary Case No. 2011-5986, Respondent confirmed that he was not familiar with Patrol Guide 209-30 "Summons Served on Vehicle Used on Department Business;" or Interim Order No. 73 of 2009 revising Patrol

Guide 209-30; or what constitutes a verifiable defense regarding a summons issued to a Department vehicle.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2010-3388

Respondent, having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011-4504

Specification No. 1

Respondent, having pleaded Guilty, is found Guilty of Specification No. 1.

Specification No. 2

The Department moved to dismiss this Specification. The Assistant Department Advocate (the Advocate) stated that the Department could not prove this charge because Respondent had, in fact, notified his immediate supervisor about the inaccurate testimony he gave regarding the recovery and vouchering of a quantity of money during a Bronx County criminal trial.

Specification No. 2 is therefore Dismissed.

Disciplinary Case No. 2011 5028

Specification Nos. 1 and 2

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 and 2.

Specification No. 3

The Department moved to dismiss this Specification. The Advocate stated that after further investigation it had been determined that Respondent had, in fact, made a notification to the Department that two Criminal Court Complaints that he had signed had been filed with Bronx County Criminal Court and that they contained factually inaccurate information.

Specification No. 3 is therefore Dismissed.

Disciplinary Case No. 2011-5986

It is charged that after Respondent was given a lawful order by Lieutenant Anderson on November 10, 2010, to obtain a final disposition of a summons that had been issued to a Department vehicle that he had parked in front of a fire hydrant on February 19, 2010, he wrongfully refused to comply with this order.

Respondent corroborated Anderson's testimony that during their telephone conversation she referred to the only summons that he had ever received when he was assigned to Bronx Vice Enforcement Squad and that she told him, "You're responsible." Based on what Anderson had told him, Respondent was required to take action regarding this summons. Yet he acknowledged that although it was his contention that he should not have to personally pay the fine regarding the summons, he did nothing. He did not even reference Patrol Guide 209 30 "Summons Served on Vehicle Used on Department Business," or Interim Order No. 73, "Revision to Patrol Guide 209-30" (issued on Dec. 4, 2009). If he had, he would have learned that as the "recipient" of the summons, voidance of which had been "denied," it was his duty "to obtain final disposition of summons."

Instead, Respondent simply ignored Anderson's direction as if their conversation had never taken place. The fact that Anderson did not relay to Respondent that a sergeant who worked in the Chief of Department's office had told her that Respondent was required to get a money order and go to Gold Street and pay the summons, does not negate the fact that it was Respondent's responsibility to find out how to obtain final disposition of the summons.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended that Respondent be suspended for 30 days and that he also forfeit 45 vacations days, for a total forfeiture of 75 days, and that he also serve one year on dismissal probation.

Respondent has been found guilty of failing to comply with a lieutenant's direction to obtain a final disposition of a summons that was issued to his Department vehicle while he was on-duty. In determining an appropriate penalty regarding this charge, I have taken into consideration the fact that Respondent was initially offered a CD with a loss of two vacation days to dispose of this charge.

With regard to Respondent's admittedly inaccurate testimony during a Bronx County criminal trial regarding the recovery and vouchering of a quantity of money recovered at a gambling location, it not disputed that on a single day (April 16, 2008) his unit conducted four separate raids at four different gambling locations and that as a result of a post-operation paperwork mix-up, $348.00 that had been recovered at one location was mistakenly vouchered under the name of a defendant who had been arrested at one of the other three locations. Because Respondent's December 17, 2009, testimony that cash was recovered from specific locations inside [redacted] was challenged by defense counsel, and because Respondent's post-testimony examination of the arrest paperwork did not result in him finding a voucher, he unknowingly gave inaccurate testimony the next day when he testified that he did not recover any cash at [redacted]

Respondent's inaccurate testimony must be considered in light of the fact that his testimony took place over a year and a half after the events he was testifying about. Moreover, although his inaccurate testimony had an adverse effect on the prosecution, this trial involved prosecution of a misdemeanor offense, not a felony offense. Also, the record shows that when Respondent's overall police work regarding these four raids at four different gambling locations is viewed in its entirety, other than a single vouchering mix up, he performed fundamentally good police work. Although his testimonial misstatements were regrettable errors, they constituted nothing more. The fact that no perjury prosecution was pursued against Respondent by the District Attorney's office supports this conclusion.

Respondent has also admitted that on February 6, 2010, he signed two Criminal Court Complaints that were filed with Bronx County Criminal Court that each contained factual inaccuracies that he had missed when he reviewed the Complaints before he signed them. Respondent admitted that in one complaint he had inaccurately asserted that defendant [redacted] had made an incriminating statement to him when this incriminating statement had actually been made to another detective and that in the other complaint he had inaccurately asserted that he had personally observed defendants Person C and Person D standing behind a counter when another detective had actually made this observation.

Although the Advocate has recommended that the penalty to be imposed on Respondent include serving one year on dismissal probation, this penalty has generally been reserved for situations where false statements in an affidavit were knowingly made or where a member has represented in an affidavit that he observed events which never actually occurred. See *Case No. 2009-1098* (Feb. 4, 2013). Neither scenario is presented here. The Department did not refute Respondent's testimony that he had inadvertently overlooked the inaccuracies when he reviewed the complaints. Also, the Department did not dispute Respondent's testimony that the events he described in the complaints had

actually occurred since defendant [redacted] had actually made an incriminating statement (to Zerafa who had communicated this to Respondent) and that defendants Person C and Person D had actually been observed behind a counter (by Vanderpool who had communicated this to Respondent).

Moreover, the Department did not dispute Respondent's testimony that when he met with an Asst. D.A. shortly after these two complaints had been filed, he reviewed the complaints, noticed the errors and alerted the Asst. D.A. about the errors. As a result of

Respondent's affirmative action, superceding complaints were prepared by the Asst. D.A. to replace the original complaints. Captain Johnson's Recommendation for Promotion letter notes that as of January 9, 2010, Respondent had made 670 arrests and had averaged over one hundred arrests per year (RX A paragraph 9). It is not surprising that such an active, busy detective might on occasion sign a Criminal Court Complaint containing a factual error that he had missed.

The facts presented here regarding the two Criminal Court Complaints containing factual inaccuracies that Respondent signed, and the facts presented here with regard to his inaccurate trial testimony regarding cash recovered at a gambling location, are similar to the facts presented in two previous decisions:

In *Case No. 2009-84991* (Oct. 2, 2009), a 17-year member who had no prior disciplinary record forfeited 30 vacation days after he pleaded guilty to making a sworn false statement in a Criminal Court Affidavit attesting that he had recovered drugs from the defendant when he had not personally recovered the drugs, and falsely testifying under oath in court that he had personally recovered the drugs. This false testimony resulted in the dismissal of the criminal charges. The member also pleaded guilty to having failed to notify his Commanding Officer or IAB about his misconduct.

More recently, in *Case No. 2011-4811* (Sept. 18, 2012), a six-year officer who had no prior disciplinary record forfeited 30 vacation days after he pleaded guilty to making a sworn false statement in a Criminal Court Affidavit and falsely testifying under oath before a Grand Jury that he had personally observed two women committing a larceny inside a store when, in fact, he had viewed a surveillance videotape which had recorded the women engaging in the larcenous conduct he described in his Affidavit and

to the Grand Jury. In that case, the officer's misconduct was considered in light of the fact that all of the other statements in his Affidavit were accurate and the rest of his Grand Jury testimony was accurate.

Finally, Respondent has pleaded guilty and admitted that on November 10, 2010, he was discourteous to Sergeants Mangome and Butler in that he used profane language in addressing the sergeants. Although members must maintain self-control at all times and must be careful to always address supervisors in a courteous manner, Respondent offered unrefuted testimony that at the time he made these remarks he had just returned from court and he was tired because he had been working for 16 hours making numerous arrests, including a firearm possession arrest, while executing search warrants that day. Respondent admitted that he "got bent out of shape" when Mangome accusingly asked him, "What are you still doing here?" and then told him that he would be receiving a CD because he had not yet made required entries in his memo book, and then told him, "If you don't care, I don't care." Respondent admitted that he told Mangome, "This is bullshit," and that although Butler had merely asked, "What are you cursing for?" he responded by telling Butler to "get your hands out of my face."

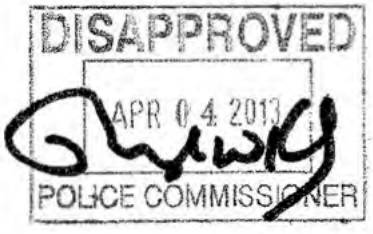
Respondent's discourteous remarks to the sergeants appears to be an aberration from his normal behavior towards supervisors since Captain Johnson's Recommendation for Promotion letter states that Respondent "always conducts himself in a professional manner" (RX A paragraph 9) and since he has never previously been charged with being discourteous to a supervisor during his 12 years of service.

Regarding Respondent's discourteous comments to the sergeants, in *Case No. 2009-68* (April 18, 2011), an 18-year detective with no prior disciplinary record received

a penalty of the forfeiture of ten vacation days after he pleaded guilty to having been discourteous to a lieutenant by stating, "This is bullshit," after he was directed by the lieutenant to remove garbage. Also, in *Case No. 2011-3967* (Sept. 10, 2012), a 13-year officer with no prior disciplinary record forfeited 20 vacation days for yelling, "This is bullshit!" after he was ordered by a lieutenant to arrest a transit recidivist. However, in that case, unlike here, the officer's discourteous comment was made in the presence of civilians and other officers.

In determining a penalty recommendation, I have also taken into consideration Respondent's excellent performance evaluations, his impressive Department Recognition Summary, the fact that he has no prior disciplinary record in over 12 years of service, and, most significantly, the Recommendation for Promotion letter written by Captain Johnson which praises Respondent's "outstanding work and dedication." (RX A paragraph 1).

It is recommended that Respondent forfeit 45 vacation days.



Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JESUS CAPO
TAX REGISTRY NO. 926640
DISCIPLINARY CASE NOS. 2010-3388, 2011-4504,
2011-5028, 2011-5986

Respondent received an overall rating of 4.5 on his 2012 performance evaluation, 4.5 on his 2011 evaluation, and 5.0 on his 2010 evaluation. He has been awarded one Combat Cross, one Honorable Mention, and one Excellent Police Duty medal. [redacted] He has no prior disciplinary record and he has no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials