



OFFICE OF THE POLICE COMMISSIONER

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CHAN

September 18, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Alexis Valdez**
Tax Registry No. 942635
Quartermaster Section
Disciplinary Case No. 2011-4811

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on March 12, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2011-4811

1. On or about and between January 10, 2009 and January 11, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, wrongfully made false written statements when he knowingly made false statements, which he did not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable in that Police Officer Valdez provided false information on arrest processing and Criminal Court paperwork concerning the arrests he made of two individuals for larceny related offenses.

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

PROHIBITED CONDUCT

2. On or about January 26, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, while before a Grand Jury panel, New York County, swore falsely and his false statements consisted of testimony and were material to the action, proceeding or matter in which it was made.

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

PROHIBITED CONDUCT

3. On or about January 26, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, while providing testimony before a Grand Jury panel, New York County, swore falsely.

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

PROHIBITED CONDUCT

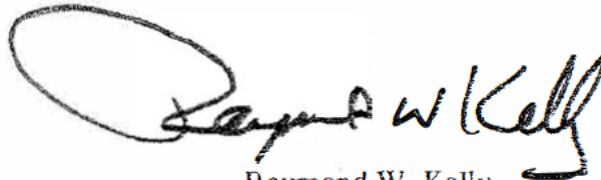
4. On or about August 2, 2011, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, presented a duplicate NYPD shield to Department personnel when asked to surrender his shield and identification card. *(As amended)*

P.G. 203-10, Page 2, Paragraph 18

PROHIBITED CONDUCT

In a Memorandum dated May 21, 2012, Assistant Deputy Commissioner Robert W. Vinal found the Respondent Guilty of Specification Nos. 1, 2, 3 and 4 in Disciplinary Case No. 2011-4811. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of Police Officer Valdez's otherwise good service and performance record with the Department, along with commendable comments offered of him by his Commanding Officer, the imposition of dismissal probation is not warranted. Therefore, Police Officer Valdez shall forfeit thirty (30) vacation days, as a disciplinary penalty.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

May 21, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Alexis Valdez
Tax Registry No. 942635
Quartermaster Section
Disciplinary Case No. 2011 4811

The above named member of the Department appeared before me on March 12, 2012, charged with the following:

1. On or about and between January 10, 2009 and January 11, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, wrongfully made false written statements when he knowingly made false statements, which he did not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable in that Police Officer Valdez provided false information on arrest processing and Criminal Court paperwork concerning the arrests he made of two individuals for larceny related offenses.

P.G. 203 10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PL 210.45 – MAKING A PUNISHABLE FALSE WRITTEN
STATEMENT

2. On or about January 26, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, while before a Grand Jury panel, New York County, swore falsely and his false statements consisted of testimony and were material to the action, proceeding or matter in which it was made.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
NYS PL 210.15 PERJURY IN THE FIRST DEGREE

3. On or about January 26, 2009, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, while providing testimony before a Grand Jury panel, New York County, swore falsely.

COURTESY • PROFESSIONALISM • RESPECT

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
NYS PL 210.05 PERJURY IN THE THIRD DEGREE

4. On or about August 2, 2011, Police Officer Alexis Valdez, assigned to Patrol Borough Manhattan South, presented a duplicate NYPD shield to Department personnel when asked to surrender his shield and identification card. (*As amended*)

P.G. 203-10, Page 2, Paragraph 18 – PROHIBITED CONDUCT
P.G. 206-10, Page 3, Note MODIFIED ASSIGNMENT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who graduated from the Police Academy in December, 2006, was initially assigned to Midtown South Precinct and Manhattan South Task Force. In November, 2008, he was assigned to the Grand Larceny Task Force (GLTF). Respondent explained that members assigned to GLTF work in plainclothes and focus on property crimes and credit card crimes committed within Patrol Borough Manhattan South. As of January 10, 2009, although Respondent had been assigned to GLTF for two months, he had not received any formal unit training, only on-the-job training.

Respondent recalled that on January 10, 2009, his partner received a telephone phone call from a contact who worked at Bloomingdale's that two females were inside the store making a purchase using a fraudulent credit card. Respondent and his team quickly responded to Bloomingdale's at 504 Broadway, Manhattan. When they arrived, Respondent learned from a store security agent that two females had just purchased jeans using a fraudulent credit card but that the perpetrators had already exited Bloomingdale's and had entered a nearby Old Navy store.

Respondent entered the Old Navy store to find the perpetrators and to conduct surveillance. Inside Old Navy, Respondent observed a "mother daughter team" carrying clothing and walking up to a register. Respondent observed them attempt to make a purchase by swiping a credit card. However, the credit card was rejected and the purchase transaction was not completed. Respondent then contacted his team by radio and informed them of what he had observed inside Old Navy. The perpetrators exited the Old Navy store and entered a Foot Locker. Respondent followed the perpetrators into the Foot Locker store.

Inside the Foot Locker store, Respondent observed the two females at a register purchasing gift cards. This purchase transaction was successfully completed. The perpetrators then exited Foot Locker and entered a nearby Armani Exchange store. Respondent followed the perpetrators into the store. Respondent observed the two females make a purchase using a credit card.

After the perpetrators exited the Armani Exchange store, they got into a car which was parked nearby on the street and started to drive away. Respondent and his team

stopped the car. After a brief struggle on the street, the two females were arrested and transported to the precinct.

One hour after the two arrestees were transported to the precinct, Respondent left the precinct and returned to Bloomingdale's to recover a videotape recorded by a security camera inside Bloomingdale's. Respondent viewed this recording which showed the women using a credit card to purchase Bloomingdale's merchandise.

Respondent was assigned as the arresting officer in the case. Respondent explained that this was his first major, complicated case because the women had made purchases in three different stores, and because one of the women was found to be in possession of six credit cards which turned out to have been stolen from six different people. Thus, Respondent had multiple complainants and he had to prepare a separate complaint report for each complainant. Respondent also had to reach out to all of the complainants to obtain their contact information and to let them know that he had recovered their credit cards but that he had to voucher their credit cards as evidence because the cards had been used in the commission of crimes. Respondent recalled that it took several hours to track down all of the complainants in the case.

Respondent explained that he also had to prepare 40 separate vouchers "because each store, each complainant, everything had to be broken down according to the owner of the property," because he "also vouchered the vehicle that they were in," which contained "other property from other stores," and because one of the women had "about 75 gift cards in her possession as well which we later tracked down" as having also been purchased using stolen credit cards "so that was more investigation that I had to do."

Respondent testified that since he had never received any specific training regarding the paperwork used by GLTF, completing the paperwork for these arrests took six to seven hours. He explained that since he was overwhelmed with the amount of paperwork he had to prepare, on the arrest processing paperwork he prepared he mistakenly wrote that he had observed the women using a credit card to purchase Bloomingdale's merchandise and he failed to notice that the Criminal Court complaint [Department's Exhibit (DX) 1] that the Assistant District Attorney (ADA) prepared also indicated that he had observed the women using a credit card to make a purchase inside Bloomingdale's.

On January 26, 2009, Respondent appeared before a New York County Grand Jury to testify regarding the case. Respondent admitted that he made a mistake during this testimony when he asserted that he had personally observed the two women inside of Bloomingdale's using a credit card to attempt to purchase merchandise. Respondent explained, "It was a mistake. I obviously was just very overworked that day and I was confused as to what happened a few weeks prior."

After he completed his testimony before the Grand Jury, Respondent, on his own volition, approached the ADA who was prosecuting the case and told him that although he had personally observed the defendants' actions inside Old Navy, Foot Locker and Armani Exchange, he had not personally observed the defendants' actions inside Bloomingdale's and that he had made a "big mistake" during his testimony before the Grand Jury by asserting that he had personally observed them inside Bloomingdale's. Respondent testified that he apologized to the ADA.

When a pre-trial hearing was conducted regarding the case, Respondent was only questioned by the ADA about the criminal histories of the defendants. Because both defendants accepted plea offers, Respondent never had to testify again regarding this case. Respondent was not arrested or criminally charged regarding his testimony before the Grand Jury. He was not transferred out of GLTF until he was placed on modified assignment on August 2, 2011, at which time he possessed a duplicate shield he had purchased. While he was assigned to GLTF, Respondent made about 75 arrests and he assisted on over 300 arrests. Respondent stated that he had exercised poor judgment when he testified before the Grand Jury that he had personally observed the defendants' actions inside Bloomingdale's. Respondent asserted that he did not make any similar mistakes in the two and a half years he served in GLTF after this incident.

On cross-examination, Respondent acknowledged that in January, 2009, he had been a police officer for two years and that at the Police Academy he had received standard training regarding completing arrest paperwork. Respondent acknowledged that he knew the difference between personally observing conduct and learning about conduct from someone else or by viewing a videotape. Respondent agreed that he had vouchered the surveillance video he obtained from Bloomingdale's about an hour after the arrests were made. He conceded that while he was at Bloomingdale's, he may have watched the video twice. Respondent agreed that he did not view the videotape again after that.

Respondent agreed that in his Grand Jury testimony (DX 3) he specifically placed himself inside of Bloomingdale's. Respondent admitted that during the course of this testimony he very specifically detailed what he had personally observed. Respondent agreed that he had testified to the color and type of credit card he observed in the hands

of the perpetrators as well as a diamond logo on the credit card. Respondent acknowledged that he also made a reference to having observed the perpetrators taking articles of clothing off the racks and proceeding to the cashier.

The surveillance video from Bloomingdale's is a color video. Respondent could not recall if he was able to see the color of the credit card on the video but he did vouch for the credit card that was used by the women inside Bloomingdale's. While vouching for the credit card, Respondent was able to examine it and observed the color and the logo on the card.

Respondent agreed that during his Grand Jury testimony he testified that he had observed one of the two perpetrators sign to purchase the merchandise. Respondent was specific with his testimony in that he distinguished between the elder and younger perpetrator as to who had signed for the merchandise.

Respondent agreed that his Grand Jury testimony took place only a couple of days after the arrests. Prior to these arrests, Respondent agreed that he had made about 35 arrests during his career. Of those arrests, Respondent stated that approximately five were "informed by" arrests and that he would fill out the same paperwork that he would in a normal arrest. Respondent agreed that the only "informed by" arrests he made were for shoplifting where a store security agent had observed someone shoplifting. Regarding the Bloomingdale's arrest, Respondent did not do an "informed by" for this arrest because he thought it did not apply to purchases using stolen credit cards.

Respondent agreed that he was informed by the loss prevention officer at Bloomingdale's that he had observed the two females committing a larceny. Though he

did not personally observe the larceny being committed inside Bloomingdale's, Respondent "put in my paperwork" that he had personally observed the larceny. Respondent explained that he had filled out his paperwork based on what he had observed when he watched the videotape.

On the arrest reports that he prepared (DX 2), Respondent agreed that he put himself in the narrative as having observed the perpetrators using credit cards inside of Bloomingdale's. Respondent confirmed this paperwork was completed within a six to seven hour period while the arrest was still fresh in his mind.

On redirect examination, Respondent expressed that he made a mistake by saying he arrested that he had made observations inside Bloomingdale's. Respondent explained that what he wrote and testified to in the Grand Jury regarding what had occurred inside the store was accurate, but that he never personally observed what had occurred inside the store. Respondent stated that what he wrote and testified to in the Grand Jury regarding his observations inside of Old Navy, Foot Locker and Armani Exchange were entirely accurate.

Respondent stated that in preparing arrest paperwork and testifying in the Grand Jury regarding the arrests he has made subsequent to this incident, he has not made any errors. Respondent agreed that although as of January 10, 2009, he had been assigned to GLTF for two months, these arrests constituted the first time that he was assigned as the arresting officer and had to prepare all of the paperwork.

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 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has admitted his misconduct by pleading guilty to all four Specifications.¹ The Assistant Department Advocate (the Advocate) recommended that Respondent be Dismissed from the Department. In making this penalty recommendation, the Advocate did not cite any prior disciplinary decisions.

Based on the facts that were adduced at this hearing regarding the circumstances surrounding Respondent's misconduct, and based on the penalties that have been imposed in previous cases involving similar misconduct, I recommend that a penalty short of immediate separation from the Department be imposed.

This case presents a somewhat unusual factual situation. In previous cases where members have made false entries on arrest processing and Criminal Court paperwork, and/or falsely testified that they were present at a crime scene and/or that they personally observed criminal activity, the member has either invented the claimed observations,² or falsely alleged being at a location he was never at,³ or falsely alleged that he had

¹ Specification No. 3, which charges that Respondent provided false testimony before the Grand Jury, is a lesser included offense relative to the false testimony charge under Specification No. 2. Since Respondent pleaded guilty to Specification No. 2, Specification No. 3 is a redundant charge.

² See Case No. 85216/09.

³ See Case No. 85558/07.

observed criminal activity which he was informed about by someone who had actually observed the criminal activity.⁴

Here, Respondent personally arrived at the crime scene (Bloomingdale's) just after the women had left the store and he personally viewed a video recording which showed the women using a stolen credit card to purchase merchandise. By virtue of his viewing of this videotape, Respondent did, in fact, observe the women engaging in the larcenous conduct he described to the Grand Jury.

Respondent's misconduct of describing what he had seen on the videotape as observations he personally made inside Bloomingdale's must also be examined in light of the fact that all of his other entries on his arrest processing and Criminal Court paperwork were accurate⁵ and all the rest of his Grand Jury testimony about his personal observations was truthful. It is not disputed that Respondent personally observed the women attempt to make a purchase with a stolen credit card inside an Old Navy store and that he personally observed the women use stolen credit cards to purchase merchandise inside Foot Locker and Armani Exchange stores.

Thus, the sole inaccuracy contained in the arrest processing paperwork he prepared and the Grand Jury testimony he proffered was his statement that he had personally observed the women inside Bloomingdale's making a purchase with a stolen credit card. No personal benefit accrued to Respondent as a result of this inaccuracy and he was not attempting to cover up any improper police action.

⁴ See Case No. 77634/02.

⁵ Although the Criminal Court Affidavit contains improper dates of occurrence, Captain Thomas Traynor, in his "Commanding Officer's Review of MOS involved in a Disciplinary Matter," attributed this mistake to the Assistant DA not Respondent because Respondent entered the correct date next to his signature on the affidavit (RX A).

With regard to the penalty to be imposed on Respondent, I also find it significant that Respondent, on his own volition, reported to the ADA that he had made inaccurate statements to the Grand Jury about observing the defendants inside Bloomingdale's. Thus, Respondent did not perpetuate his misstatements to the Grand Jury by repeating them at a pre-trial suppression hearing⁶ or at a trial.

Finally, in determining the penalty to be imposed on Respondent it is appropriate to consider whether Respondent's misconduct had any adverse effect on the subsequent prosecution. The Advocate did not dispute Respondent's assertion, which was corroborated by Captain Thomas Traynor in his "Commanding Officer's Review of MOS involved in a Disciplinary Matter" [Respondent's Exhibit (RX) A], that the older of the two women was a career larceny recidivist, that she pleaded guilty, and that she received a prison sentence of 2 ½ to 5 years. Thus, Respondent's misconduct does not appear to have had any adverse effect on the prosecution of his arrests.

With regard to the penalties that have been imposed in previous cases involving similar misconduct, in Disciplinary Case No. 80195/04 (signed on 4/4/05), an eight-year officer who had no prior disciplinary record forfeited 60 suspension days and agreed to file for vested retirement after he pleaded guilty to signing an accusatory instrument which he knew contained facts that were not true, and for committing perjury on two occasions. In front of a Grand Jury and later at a pre-trial suppression hearing, the officer falsely testified that he had recovered a weapon from a prisoner when, in fact, the weapon was recovered by another member.

⁶ See Case No. 80195/04.

In Disciplinary Case No. 82558/07 (signed on 2/11/08), a 13 year officer who had no prior disciplinary record forfeited 30 vacation days and was placed on dismissal probation after he pleaded guilty to falsely swearing in a criminal court affidavit, and falsely stating at an official Department interview, that he was present at the scene of an arrest when the truth was that he was assigned the arrest for processing at another location.

Also, in Disciplinary Case No. 84991/09 (signed on 10/2/09), 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. He also pleaded guilty to having failed to notify his Commanding Officer or IAB about his misconduct.

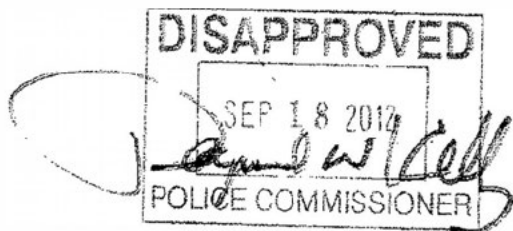
More recently, in Disciplinary Case No. 81306/05 (signed on 4/27/10), a 14 year officer with one prior disciplinary adjudication forfeited 60 days (consisting of 31 vacation days and 29 days served on pre-trial suspension) and was placed on dismissal probation after he was found guilty of falsely testifying to a Grand Jury that during a narcotics operation he had personally made cocaine purchases. He was also found guilty of carrying an unauthorized firearm, failing to list this gun on his Force Record, failing to fully load the gun, and neglecting to notify the Department that he had changed his telephone number.

Most recently, in Disciplinary Case No. 85216/09 (signed on 6/2/10), a four-year officer with no prior disciplinary record forfeited 30 vacation days and was placed on

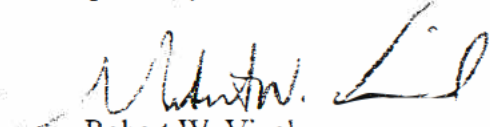
dismissal probation after he pleaded guilty to entering false information on a summons. That officer failed an integrity test when he falsely alleged on the summons that an individual (an undercover officer posing as a civilian) had intentionally blocked pedestrian traffic and refused to sign a Criminal Court summons.

Here, the record shows that when Respondent's pre arrest surveillance work and his post arrest investigative work regarding these multiple larcenies is viewed in its entirety, he performed fundamentally good police work and that his misstatements on his paperwork and in his Grand Jury testimony were limited to the larceny that was committed at Bloomingdale's. Although these 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.

Consistent with the penalties imposed in the above-cited disciplinary cases, and taking into consideration Captain Traynor's comments about Respondent (RX A) and Respondent's lack of a prior disciplinary record in nearly six years of service, it is recommended that the 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 the Respondent forfeit 30 vacation days.



Respectfully submitted,

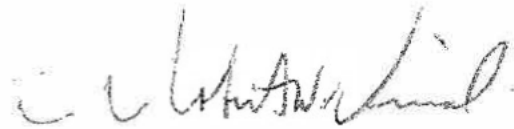

Robert W. Vinal
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALEXIS VALDEZ
TAX REGISTRY NO. 942635
DISCIPLINARY CASE NO. 2011-4811

The Respondent received an overall rating of 4.0 on his 2010 performance evaluation, 4.5 on his 2009 evaluation, and 4.0 on his 2008 evaluation. He has been awarded one Meritorious Police Duty medal and 15 Excellent Police Duty medals. [REDACTED]
[REDACTED] He has no formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials