The City of New York

POLICE DEPARTMENT

June 4, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Christopher Kearney
Tax Registry No. 943429
7 Precinct
Disciplinary Case Nos. 2014-12206 & 2014-12385

The above-named member of the Department appeared before the Court on April 7, 2015, charged with the following:

Disciplinary Case No. 2014-12206

1. Said Police officer Christopher Kearney, while assigned to the 114th Precinct Queens Gang Squad, on or about June 1, 2013 and through August 31, 2013, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: while on duty, he used a Department battering ram in the execution of a practical joke.

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

2. Said Police officer Christopher Kearney, assigned as indicated in Specification #1, on the date as indicated in Specification #1, while on-duty did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: as result of a practical joke he conducted, Police Officer Kearney caused damage to a bathroom door located inside of a Department facility.

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

Disciplinary Case No. 2014-12385

1. Said Police Officer Christopher Kearney while assigned to the Queens Gang Squad, on or about December 18. 2013, May 22, 2014 and May 23, 2014, did engage in conduct prejudicial to the good order and efficiency of the Department to wit: he used his personal video camera to record the execution of a search warrant and did not have the permission or authority of the Department to do so. *(As amended)*

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

2. Said Police Officer Christopher Kearney while assigned to the Queens Gang Squad, on or about December 18, 2013 and through June 11, 2014, did engage in conduct prejudicial to the good order and efficiency of the Department to wit: he failed to disclose and provide a copy of the video recordings he made of the execution of search warrants to the Office of the District Attorney. *(As amended)*

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

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office. Respondent was represented by Craig R. Hayes, Esq. Worth, Longworth & London LLP.

DECISION

Respondent, having entered a plea of Guilty to the subject charges through counsel, is found Guilty as charged. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

FINDINGS AND ANALYSIS

Respondent pleaded Guilty in two separate but somewhat related incidents. In the first, Case No. 2014-12206, Respondent testified that he and others were playing a practical joke on a colleague, Detective Daniel Sjoberg, also assigned to the Queens Gang Squad. Respondent described Sjoberg as a good friend. After returning from the field, Respondent and his

compatriots locked Sjoberg in the bathroom by placing a shovel across the doorway and attaching it to a handcuff placed around the doorknob.

Respondent testified that his supervisor got in on the prank as well, pretending to attempt to dislodge the shovel. The supervisor then announced that the prank had gone on long enough and everyone should stop. Nevertheless, Respondent retrieved a battering ram from the equipment closet and engaged it against the door, pretending to try and rescue Sjoberg. The door sustained some small dents.

Respondent also lit a piece of paper on fire and placed it near the bottom of the door. This was to create to Sjoberg the "illusion" of smoke, although Respondent admitted that smoke was created. In fact, the fire lasted for about ten seconds. Respondent also conceded that another detective had a fire extinguisher and was going to spray Sjoberg with it as part of the prank. Finally, Respondent admitted that he took a bottle of lighter fluid and was going to accelerate the lit piece of paper, but stopped himself. The fire went out on its own. Sjoberg was released and people laughed. Respondent admitted that the prank was his idea.

Respondent recorded the incident on a camera that he set up. He testified that about four people were present, although one left during the course of the prank.

Respondent described the event as part of the joking around in which his squad often participated as a way of blowing off steam after dealing with dangerous criminals. Evidently not everyone felt that way. The flash drive was forwarded anonymously to the Internal Affairs Bureau. IAB discovered other videos on the drive, one of which was a search warrant execution. This led to the charges in Case No. 2014-12385.

Respondent admitted that he took the videos using a small helmet-mounted camera. He did so for his own training purposes and not for amusement value or to post the videos on social media. In fact, he recorded only the entries, not the searches. Nevertheless, he did not forward

the videos to the District Attorney's Office as discovery after the subjects were arrested. He did not realize the videos should have been turned over as material pursuant to People v. Rosario, 9 N.Y.2d 286 (1961), as they did not record the recovery of evidence. In fact, the videos should have been disclosed, but they were deleted after viewing.

The Department recommended a penalty of the forfeiture of 30 vacation days and the placement on one year of dismissal probation. Respondent asserted that he should receive a penalty of vacation days only. He noted that he was not the only participant in the prank on Sjoberg. In fact, the Advocate represented that several members, including the supervisor, were facing discipline. Respondent pointed out that no one was physically hurt.

Respondent also explained that at the time of the practical joke, he was in a detective-track position within the Queens Gang Squad. He had been there for over 17 months, so in two more weeks he would have been eligible for promotion to detective. Because of what he described as a stupid, unthinking mistake, Respondent posited that he had suffered a removal from promotional eligibility and return to patrol within a precinct-level command.

The hijinks at Respondent's command were outrageous and he was the instigator. There is nothing funny about fire. This city has seen too many tragedies arising from it and here people could have been seriously hurt or worse. Sjoberg – and Respondent – were lucky.

The cases cited by the Department nevertheless do not support a jump to dismissal probation. In Case No. 2011-5940 (Dec. 31, 2012), the officer sprayed throat-lozenge spray into another officer's mouth during what both described as a playful argument. The officer indicated that he was pretending to spray his pepper spray at the other officer. The event nevertheless caused the second officer to be unfit for duty that day. As a penalty, the first officer forfeited the 31 days already served on suspension. In Case No. 2013-10712 (Dec. 12, 2014), the officer forfeited 20 vacation days for, inter alia, using her personal cell phone to photograph a suspect,

himself a member of the Department, during a search warrant execution on a child-pornography investigation, and failing to voucher the photograph. She also discussed the matter with other officers unrelated to the investigation.

Here, however, the Department did not explain why Respondent's guilty pleas to two separate incidents should result in dismissal probation, especially when his misconduct with regard to the video was much less serious than that in the child pornography case. There are no hard and fast rules for when dismissal probation may be imposed. Generally, however, it may be implemented where the officer's prior disciplinary record indicates that prior penalties have not led to improved conduct, or where the facts indicate that the officer again will engage in misconduct. See *Case No. 2011-5299*, pp. 9-10 (Dec. 17, 2012).

After the incident, Respondent was placed on modified duty and eventually returned to patrol. He was chastened significantly by his own stupidity and lost the opportunity for a major career advancement. Thus it is unlikely that this misconduct will be repeated. Respondent has no other prior disciplinary history.

As such, dismissal probation is not warranted. A penalty of vacation days only is sufficient to penalize the serious misconduct here. The Court recommends a penalty consistent with the Advocate's citations, which is the forfeiture of 45 vacation days.

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

Respectfully submitted,

APPROVED

OCT 14 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHRISTOPHER KEARNEY
TAX REGISTRY NO. 943429
DISCIPLINARY CASE NOS. 2014-12206 & 2014-12385

Respondent was appointed to the Department on January 10, 2007. He received an overall rating of 4.0 on his last three performance evaluations. [redacted]

In 2009, Respondent was placed on Level I Force Monitoring for having three CCRB complaints in one year. In 2014, Respondent was placed on Level II Discipline Monitoring as a result of the charges and specifications in this case.

Respondent has received three medals for Excellent Police Duty and three for Meritorious Police Duty.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials