



POLICE DEPARTMENT

March 8, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Pedro Serrano  
Tax Registry No. 935725  
40 Precinct  
Disciplinary Case No. 84524/08

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The above-named member of the Department appeared before me on October 15, 2010, November 8, 2010, and December 3, 2010, charged with the following:

1. Said Police Officer Pedro Serrano, assigned to the 40th Precinct, while on-duty on or about March 7, 2008, at a location known to this Department, in Bronx County engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer was in a verbal and physical altercation with an individual known to this Department.

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

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that the Respondent, assigned to the 40 Precinct, was on-duty on March 7, 2008, performing a 1200 hours to 2000 hours tour. The Respondent, partnered by Police Officer Smalls, was assigned to transport prisoners from the 40 Precinct to Bronx Central Booking (Central Booking) for processing and then transport prisoners from Central Booking to the 47 Precinct for lodging. One of the prisoners that the Respondent and Smalls transported that day was Ivan Lugo.

The Department's Case

The Department called Sergeant Alfred Vargas and Sergeant Patrick McGill as witnesses.

Sergeant Alfred Vargas

Sergeant Vargas, who is currently assigned to Bronx Investigations Unit (BIU) and who has been employed by the Department for 13 years, recalled that on March 7, 2008, he became involved in an investigation originating from an incident that occurred outside of Bronx Criminal Court that day. At about 0700 hours, BIU received a phone call from the 47 Precinct that there was an allegation made against an officer transporting a prisoner. Vargas responded to the 47 Precinct to conduct interviews. At the 47 Precinct, he learned that a prisoner named Ivan Lugo that was being transported to the 47 Precinct by members assigned to the 40 Precinct had made an allegation that he had been physically

assaulted by the Respondent after the van had come to a stop about a block away from Central Booking and that he had sustained an injury on his forehead

Vargas determined that the reason that Lugo was in custody was because for unknown reasons, Lugo had run into the 41 Precinct, passed the main desk, and was apprehended inside the Muster Room after there was "a little altercation in restraining him " Vargas did not know ' if they ever found out why he came running in there but they had arrested him for criminal trespass " The Respondent was not involved in the stop or the arrest of Lugo

Vargas interviewed all the prisoners who had been transported in the van with Lugo by the Respondent and Smalls, and Vargas interviewed Sergeant McGill, the supervisor at the 47 Precinct who, when the prisoners arrived there, conducted a visual inspection of the prisoners and asked them if they had any medical problems

Vargas interviewed Lugo<sup>1</sup> who said that when he was placed back in the van after exiting Central Booking, he was seated on the middle bench of the three benches The first bench was empty and he was seated on the second bench near the exit Lugo told Vargas that he was talking with the other prisoners in the van and that the Respondent took offense to his loud talking The Respondent told Lugo that he was trying to take a nap and that he should be quiet Vargas recalled that Lugo stated that he told the Respondent, "This is America I can say whatever I want " The Respondent then exited the passenger side of the van, opened the side doors of the van, got into the van, sat down next to Lugo slapped him a few times and then head-butted Lugo on his forehead Lugo told Vargas that the Respondent then exited the van and went back to the front seat and sat there, waiting for his partner, who had exited the van and was engaged in a conversation with a motorist

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<sup>1</sup> The transcript of the tape recorded interview of Lugo by Vargas on March 7 2008, was entered in evidence (DX 3)

Vargas observed that Lugo had a visible contusion on the right side of his forehead above his right eye. Lugo stated that was the only physical injury that he had and Vargas did not see any other physical injuries to Lugo. Vargas described Lugo as upset and very agitated about the incident that occurred, and that he called the Respondent "an asshole" because of the head-butting.

Vargas identified the mugshot pedigree photograph of Lugo [Department Exhibit (DX) 1] which was taken on the day of incident at Central Booking by personnel assigned to Central Booking during intake processing of prisoners that are going to be lodged at Central Booking. Vargas obtained this photo from the Department's computer system.

Vargas took four photographs of Lugo's face (DX 2, A-D) on the morning of March 7, 2008, when he interviewed him at the 47 Precinct. Vargas asked him if he needed medical attention but Lugo indicated that it was not necessary, so he received no medical attention.

Although Vargas interviewed all four of the prisoners that were inside the van and were being transported with Lugo, he could only recall the name of one these four prisoners. That prisoner was [REDACTED] [REDACTED] [REDACTED] stated that he was sitting on the same bench that Lugo was sitting on and that he was the only other prisoner on that bench. The other prisoners were behind him. Vargas found that [REDACTED]'s story was consistent with Lugo's in that [REDACTED] stated that the officer in the front passenger seat was attempting to sleep inside the van.

When Vargas asked [REDACTED] if he had observed any kind of altercation that had occurred in the van, [REDACTED] stated that he had observed an altercation, that the officer had

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<sup>2</sup> The Assistant Department Advocate stated that he attempted to contact [REDACTED] to arrange for him to come in and testify at this trial but that the telephone number for [REDACTED] was out of service.

exited the front passenger seat of the van, opened the side doors to the van, entered the van, started to slap Lugo around and engaged in a physical altercation with Lugo. [REDACTED] then said that the officer left the van and got back in the front seat of the van. [REDACTED] stated that when they arrived at the 47 Precinct, a sergeant asked if anybody had any injuries. When Lugo told the sergeant that he had an injury, [REDACTED] told the sergeant, "That s pretty messed up, that the cop beat him up." [REDACTED] was then placed into a separate cell at the 47 Precinct until Vargas arrived to interview him.

On April 6, 2008, Vargas conducted an official Department interview of the Respondent. The Respondent stated that while he and Smalls were transporting the prisoners to the 47 Precinct from Central Booking, Smalls, who was driving, stopped the van to provide directions to a motorist. Lugo started becoming agitated. The Respondent said that he exited the van, opened the side doors of the van, and got into the van. The Respondent stated that he tried to calm Lugo down, but that Lugo tried to kick him. When he attempted to restrain Lugo from kicking him, Lugo tried to bite him and Lugo attempted to head-butt him. Vargas asked him if he had sustained any injuries. He stated that he had not sustained any injuries because Lugo's attempts to kick him, bite him and head butt him were unsuccessful. When Vargas asked him whether he was aware of any physical injury to Lugo's forehead, he said that he did not notice any injury on him there at all.

The Respondent told Vargas that at the 40 Precinct, when he attempted to handcuff Lugo to secure him for transport to Central Booking, there was a minor altercation because Lugo, for some reason or another, did not want to be handcuffed, and he had to restrain him in order to handcuff him. Vargas asked him if he had notified any supervisor about the altercation that occurred in the van in which Lugo attempted to bite

him and kick him and he said he did not think that it was important enough to notify a supervisor about it

On cross-examination, Vargas confirmed that he had performed a criminal background check on Lugo. The 57-page criminal history report he obtained showed that Lugo had used several different names and that Lugo been convicted as many as 39 times in various New York State Courts.

Vargas confirmed that Lugo was arrested for criminal trespass on March 6, 2008, after he ran into the precinct screaming and yelling somebody was chasing him that he was subdued in the Muster Room, and that he had run up the stairs to the second floor of the precinct. Vargas agreed that Lugo's conduct prior to being taken into custody was relevant in determining whether or not he was being truthful and forthright about his allegations against the Respondent.

Vargas confirmed that several hours elapsed from the time that Lugo said that the Respondent had head-butted him, to the time that Lugo was placed in a cell at the 47 Precinct. Vargas arrived about an hour after McGill called. When he got there, Lugo was segregated from the other inmates. Lugo appeared to Vargas to be "a nervous type person," but Vargas did not know whether he was "on any kind of intoxicants."

When Vargas was asked whether Lugo appeared to be under the influence of any intoxicant or any controlled substance, he answered that Lugo was "hyper" but that he did not know if he was high or drunk. Vargas did not review the online booking sheets to see if Lugo had any track marks or any other indication that he used drugs, but he may have been under the influence of some type of mind-altering substance. Vargas did not interview the

Desk Officer in the intake area at Central Booking or the officers who were assigned to the initial processing of Lugo at Central Booking

Vargas agreed that Lugo was probably lodged at Central Booking for "a couple hours" with other individuals at Central Booking. He did not know whether the holding area at the intake section of Central Booking holds about 30 inmates. He never checked to see whether or not Lugo was involved in any type of altercation there.

Lugo never told him that the Respondent had punched him in the face, or struck him in the face with his hand, or kicked him in the face, or elbowed him in the face. Lugo only alleged that he had been head-butted once or twice.

When Vargas responded to the 47 Precinct based on McGill's notification, he had the opportunity to see the Respondent who had no redness or visible injury to his head. EMS had already treated Lugo and left the 47 Precinct by the time Vargas got there. Lugo did not have a Band-Aid on his forehead, but he had a small mark which might have been blood or a cut.

On redirect examination, Vargas recalled that small mark which might have been blood or a cut was on his contusion. Lugo did not allege that he had been mistreated at the 40 Precinct or at Central Booking.

Sergeant Patrick McGill

Sergeant McGill, who has held the rank of sergeant for 13 years and who is assigned to the 47 Precinct, testified that on March 7, 2008, at about 0400 hours he was on duty at the 47 Precinct assigned as the Desk Officer. He recalled that Lugo was a prisoner who was brought into the 47 Precinct for lodging and that one of the five or six other

prisoners that were being brought in with him stated that Lugo had been assaulted by an officer inside the van. McGill could not recall if he specifically mentioned the officer's name, but that he was not the Officer who brought the prisoners to the desk. McGill observed that Lugo had a bruise on his forehead. McGill notified Emergency Medical Services (EMS), the Duty Captain and the Internal Affairs Bureau (IAB). He separated Lugo from the other prisoners and lodged him in a separate cell. Lugo received medical treatment from EMS.

On cross-examination, McGill could not recall if he had spoken to Lugo. He explained that he had separated Lugo from the other prisoners because he had called the Duty Captain and he knew that an investigation would be conducted, not because he feared for Lugo's safety. He did not look into whether there had been a fight amongst the prisoners that were brought into the 47 Precinct. He did not review the paperwork for the individuals that were brought in to see whether or not they had been injured during arrest processing and he did not take any photographs of Lugo. He had no idea whether Lugo was intoxicated or under the influence of any type of narcotic or controlled substance. McGill could not recall if other arrestees were being brought into the 47 Precinct at the time that Lugo arrived. McGill confirmed that it would be incumbent upon a supervisor to immediately take some type of affirmative notification action if he saw an injury to a prisoner at any point during arrest processing. McGill confirmed that he did not call Central Booking to see if Lugo had been involved in any fights or had been injured prior to arriving there. McGill agreed that another detainee had said that the prisoner he later learned was named Lugo had been struck.



The Respondent's Case

The Respondent testified in his own behalf

The Respondent

The Respondent recalled that he and Smalls moved Lugo and about four other prisoners from the 40 Precinct into the transport vehicle via a daisy chain and that when he personally handcuffed Lugo to the chain, Lugo was very angry, he became violent, he began cursing, he admitted that he was "on PCP," and he stated that he did not want to be touched. He also told the Respondent that he was going to kill him. The Respondent asserted that he approached the 40 Precinct desk officer and told him that he believed that Lugo should go to the hospital because he was "a little unstable." He was told to transport him anyway. He placed him in the prisoner transport vehicle in the middle row. Smalls got into the driver's seat and the Respondent sat in the front passenger seat.

Throughout the trip from the 40 Precinct to Central Booking, which takes about five or ten minutes depending on traffic, Lugo acted in a violent, angry manner and he was banging his head. He had begun banging his head in the cage inside the 40 Precinct, and inside the van he was banging his head and kicking the chair. Lugo "had these real big eyes just staring me down, gritting his teeth, just pure hate, anger." Lugo kept referring to the Respondent as "a devil."

When they arrived at Central Booking, Smalls dealt with Lugo and escorted Lugo into Central Booking. After Lugo was questioned by EMS and photographed, the supervisor at Central Booking told them that Central Booking was full and that they did not want to lodge any more prisoners, so they were told to put Lugo and the other prisoners back into the van and take them to the 47 Precinct. Lugo became more agitated when he

learned that he would not be staying at Central Booking and he was "banging on the cage and kicking "

After they placed Lugo and the other prisoners back into the van to take them to the 47 Precinct, Smalls drove about a block or two and then stopped. The Respondent asserted that when Smalls exited the driver's seat to give directions to someone, Lugo took the opportunity to "creep" from the left all the way to the right and he then started to kick the front passenger seat where the Respondent was sitting. Lugo was "just out of control ". When the Respondent felt something wet in the back of his head, he assumed that Lugo had spit on him although he was not one hundred percent certain. The Respondent asserted that since there is no cage or partition between the front area, where the driver and passenger sit, and the prisoner area, there was nothing that would prevent Lugo from grabbing him.

The Respondent stepped out of the van and warned Lugo not to move because he was going to enter the center of the inside of the van. He opened up the gate of the door on the passenger side, entered the van, sat down next to Lugo and tried to calm him down by telling him that it was just going to be a couple minutes and that then "this will all be over with ". Lugo tried to bite him and made a face as if he was going to spit on him again. The Respondent then placed the open palm of his hand on Lugo's right cheek and turned his face by pushing on his cheek and holding it there. The Respondent pushed him all the way up to the wall. Lugo then tried to pick up his right leg so the Respondent pinned his right leg to the floor by using his left leg to step on his foot. He then pushed towards Lugo to pin him. The Respondent recalled that at that point in time, he weighed about 250 pounds and that Lugo weighed about 120 to 140 pounds.

The Respondent asserted that he has a lot of experience dealing with people who are 'on PCP' and that Lugo had the characteristics and the strength of someone on PCP. Once he had pinned Lugo's legs to the floor, Lugo tried to hit him with his arm that was not handcuffed. When the Respondent grabbed Lugo's arm, Lugo tried to bite his finger by turning his head. Lugo again called him a devil.

The Respondent's partner was still outside the van giving directions to a pedestrian, standing two car lengths in front of the van. The Respondent asserted that he did not yell to his partner to help at this point because he felt that he could control the situation. The other prisoners were just watching, although one prisoner was 'instigating the whole thing' by telling Lugo "fight him, bite him." He could not recall that prisoner's name. He described him as "the ring leader of all of them," that he was very upset that he had been arrested and that this prisoner had told him, 'I'm going to get your job and you watch what's going to happen.'"

By the time his partner came back and entered the van, the Respondent's struggle with Lugo, which had lasted five to seven minutes, was over because he had subdued Lugo. As the Respondent started to step away from Lugo and tried to slide outside, Lugo tried to head butt him. Lugo continued to throw his head towards him and the Respondent kept pushing him away using his open right hand to push Lugo's face in order to push his forehead away.

The Respondent asserted that during his struggle with Lugo, he never punched Lugo, head butted him, spit on him, bit him, or kicked him. He only used his open hand to get away from him. The Respondent asserted that Lugo had tried to head-butt him three times.

His partner then drove the van to the 47 Precinct which is about a 20 to 25 minute trip from Central Booking. Upon arrival at the 47 Precinct, the prisoners were removed from the van. As they entered the 47 Precinct, Lugo was the first prisoner in the line and the others followed him. The Respondent asserted that he let his partner take position at the front of the line and that he took the rear of the line because the Respondent was the focal point of Lugo's anger and he did not want to antagonize him. The Respondent asserted that as the line walked into the 47 Precinct, once he saw that Lugo was secure, he remained outside so as not to get Lugo "aggravated because in front of the desk officer aggravated perps [perpetrators] means it's just more problems.

On cross-examination, the Respondent agreed that when Lugo kicked the back of the front passenger seat where he was seated, Lugo's foot did not make contact with the Respondent's body. The Respondent reiterated that at the 40 Precinct Lugo had been acting in such a "disruptive, deranged, angry" manner that he believed that Lugo should have been taken to the hospital. After he searched Lugo, because he was required to do so before placing him into the van, he tried not to antagonize him. The Respondent agreed that when Lugo was placed back in the van after processing at Central Booking, Lugo became even more disruptive. When the Respondent was asked why he had not mentioned being struck on the back of his head by something wet, or that he believed that Lugo had spit at him, when he was interviewed by Department investigators on April 6, 2008, he answered that he had "made a mistake" in not mentioning this. The Respondent denied that he had exited the van and entered the prisoner seating area in order to address Lugo's action of spitting at him. When the Respondent was asked whether a prisoner's act of spitting at a uniform member of service constituted the crime of assault, he answered, "I

am not too sure It might be harassment You spit at us, it is definitely something I just don't know exactly what "

When his partner was speaking to the pedestrian, he was two to three car lengths away from the van He did not attempt to call his partner regarding Lugo s disruptive actions When the Respondent was asked whether Lugo had sustained any injury between the time when the van left the 40 Precinct and arrived at Central Booking, he answered that he could not recall but that because Lugo 'was banging the gate it s possible I can't say that he did injure himself or didn't '

When the Respondent was asked whether it was prudent for him to enter the prisoner seating area when he was aware that Lugo had already directed his disruptive behavior at him, he answered, 'I had to get involved, yes, ' because "if I let them get out of control they can hurt me because it's four to five against one It's a crowd Once the momentum starts to build you have to stop it immediately because I am a victim I have one goal It's to go home every day and I will not let anyone hurt me That is what that crowd was about to do, get out of control I as a police officer did what I had to do to stop him from hurting me or anyone else in the van and once I did what I did, the whole van calmed down so I think I did as a police officer what I am supposed to do "

When the Respondent was asked why he had not radioed for assistance or called to his partner for help he answered, 'I reacted He was disruptive I'm a police officer I took action If it would have went beyond that and if I thought I needed back up, I would have called There are many situations in my performance as a police officer where I can't just call back up for every situation that happens There won't be any patrol cars available

to do anything So I saw the situation I attempted to control it and I actually did control it and I went back to my seat and we drove to the 47 Precinct

The Respondent was asked by the Trial Commissioner to look at the photos that Vargas took of Lugo's face (DX 2 A-D) at the 47 Precinct The Respondent conceded that these photos depict a bruise above Lugo's right eye When the Respondent was asked whether he was able to explain, or if he knew, how that bruise came about, he answered, "I do not I can only speculate " When the Respondent was asked whether when he dropped Lugo off at the 47 Precinct, he had noticed that he had a bruise on his forehead, he answered, "I did not " He recalled that at the 47 Precinct, after the prisoners had been lodged there and while he was waiting for his union representative to arrive, he and his partner had looked at each other after his partner told him that Lugo had a bruise, but he did not personally see the bruise He explained that when his partner marched Lugo and the other prisoners into the 47 Precinct and up to the front desk, he waited outside because he was ' still the focal point" and he did not "want this to get out of control ' He did not enter the 47 Precinct until his partner came outside and told him that a sergeant who was assigned to 47 Precinct wanted to speak to him inside the station- house

#### FINDINGS AND ANALYSIS

It is charged that the Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by engaging in a verbal and physical altercation with Lugo

To prove this charge, the Department offered the hearsay statement Lugo made to Vargas (DX 3) Vargas confirmed that Lugo's 57-page criminal history report shows that

he has used different names when arrested and that he has been convicted of various offenses on as many as 39 occasions. Vargas also confirmed that the reason that Lugo was being transported in the Respondent's prisoner van was because he had just been arrested for criminal trespass after he ran into the 40 Precinct screaming that someone was chasing him and that he had run up the stairs to the second floor of the stationhouse before he could be apprehended.

Based on the above, Lugo's hearsay claim that the Respondent head-butted him in the prisoner seating area of the van can only be credited if the record contains direct corroboration for his claim. I find that the record contains such corroboration.

The Respondent himself corroborated Lugo's claims that while the van was en route from Central Booking to the 47 Precinct, the driver (Smalls) stopped the van and got out of the van and that while he was still outside the van, the Respondent entered the prisoner seating area and made physical contact with Lugo's face. Although the Respondent's allegation that Lugo tried to head-butt him is unsupported, Lugo's claim that the Respondent head-butted him on his forehead is directly corroborated by the photographs of Lugo's face (DX 2 A-D) taken by Vargas at the 47 Precinct.

Moreover, when the mugshot pedigree photograph of Lugo (DX 1) which was taken at Central Booking and depicts an unblemished forehead is combined with McGill's testimony that when Lugo was presented at the front desk of the 47 Precinct he had a bruise on his forehead, this independent evidence establishes that the bruise which is depicted in the photos of Lugo's face taken by Vargas (DX 2 A-D) must have been the result of a sharp blow to Lugo's forehead which took place between his processing at Central Booking and his arrival in front of McGill's desk at the 47 Precinct. The only

intervening event contained in this record is the Respondent's admitted physical contact with Lugo in the prisoner seating area of the van. However, the injury to Lugo's forehead is not consistent with the Respondent's claim that his only contact with Lugo's face consisted of an open-handed push.

Since the bruise which is depicted in the photos of Lugo's face taken by Vargas (DX 2 A-D) is consistent with a head butt and since the Respondent could offer no explanation as to how Lugo sustained this injury, the record contains only one plausible version for how this injury came about: Lugo's version.

Since the Respondent offered no explanation as to how Lugo sustained a bruise to his forehead (and even claimed that he was unaware of this bruise), this is not a situation where the Respondent has offered an explanation as to how a complainant sustained an injury which is just as plausible as the complainant's version as to how the injury was sustained.<sup>3</sup> Here, only Lugo's version explains the injury. Moreover, although the Respondent asserted that he did not enter the 47 Precinct with his partner and Lugo because he did not want to "aggravate" Lugo in front of the desk officer, the fact that he remained outside leads to the suspicion that he was fully aware that he had caused the injury to Lugo's forehead and he did not want to be questioned by the desk officer about how the injury came about.

Based on the above, I find the Respondent Guilty of having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by engaging in a physical altercation with Lugo in the prisoner seating area of the van during which he head-butted Lugo.

The Respondent is found Guilty.

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<sup>3</sup> See *Vallebuona v. Kerik*, 294 A.D.2d 44 (1st Dept. 2002) cited in Disciplinary Case No. 78111/02.



PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

The Respondent was appointed to the Department on July 1, 2004 Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

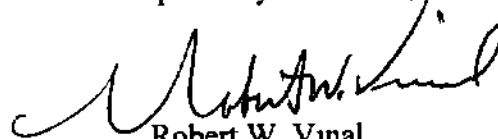
The Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency and discipline of the Department, in that he engaged in a verbal and physical altercation with Lugo during which he head butted Lugo

The Advocate recommended that the Respondent forfeit ten vacation days

In formulating a penalty recommendation, I have taken into consideration the Respondent's consistently good performance record, the fact that he has no prior disciplinary adjudications, and the fact that although the Respondent caused a visible bruise to Lugo's forehead, this bruising did not constitute a serious injury

It is recommended that the Respondent forfeit five vacation days

Respectfully submitted,



Robert W Vinal

Assistant Deputy Commissioner - Trials

**APPROVED**



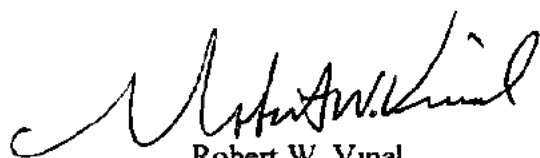
SEP 02 2011  
RAYMOND W KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
POLICE OFFICER PEDRO SERRANO  
TAX REGISTRY NO 935725  
DISCIPLINARY CASE NO 84524/08

The Respondent received an overall rating of 4.0 on his 2010 performance evaluation, 4.0 on his 2009 evaluation, and 4.0 on his 2008 evaluation. He has no medals [REDACTED] He has no prior formal disciplinary record.

For your consideration



Robert W. Vinal  
Assistant Deputy Commissioner - Trials