



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 8, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Andrew Hatki**
Tax Registry No. 901671
40 Precinct
Disciplinary Case No. 2015-13822

The above named members of the service appeared before Deputy Commissioner Rosemarie Maldonado on March 3, 2016 and April 19, 2016, charged with the following:

DISCIPLINARY CASE NO. 2015-13822

1. Said Lieutenant Andrew Hatki, while on duty and assigned to the 40th Precinct, on or about July 15, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as an auto stripping when it should have been classified as a grand larceny. *[Dismissed]*

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY -
GENERAL**

2. Said Lieutenant Andrew Hatki, while on duty and assigned to the 40th Precinct, on or about July 23, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as a misdemeanor assault when it should have been classified as a robbery.

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY -
GENERAL**

3. Said Lieutenant Andrew Hatki, while on duty and assigned to the 40th Precinct, on or about June 5, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as a petit larceny when it should have been classified as a grand larceny.

P.G. 203-05, Page 1, Paragraph 4

**PERFORMANCE ON DUTY -
GENERAL**

4. Said Lieutenant Andrew Hatki, while on duty and assigned to the 40th Precinct, on or about June 23, 2014, did instruct a subordinate to not generate a Complaint Report even though Members of the Service responded to a radio transmission of a robbery and spoke to the complainant.

**Operations Order #5 of 2012,
Page 1, Paragraph 2(a)**

**PROPER PRELIMINARY
INVESTIGATIONS OF
COMPLAINTS, COMPLAINT
RECORDING AND ACCURATE
CLASSIFICATION OF
COMPLAINTS**

P.G. 207-07, Page 1, Paragraph 3

**PRELIMINARY
INVESTIGATION OF
COMPLAINTS**

5. Said Lieutenant Andrew Hatki, while on duty and assigned to the 40th Precinct, on or about July 23, 2014, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant made inaccurate and misleading statements to investigators during official Department interviews. *(As amended)*

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated July 22, 2016, Deputy Commissioner Rosemarie Maldonado found Lieutenant Hatki Guilty of Specification Nos. 2, 3, 4, and 5, and dismissed Specification No. 1 in Disciplinary Case No. 2015-13822. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Lieutenant Hatki.

I have considered the totality of the issues and circumstances in this matter, and deem that a period of dismissal probation is not necessary. Therefore, Lieutenant Hatki is to forfeit thirty-five (35) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

July 22, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Andrew Hatki
Tax Registry No. 901671
40 Precinct
Disciplinary Case No. 2015-13822

Charges and Specifications:

1. Said Lieutenant Andrew Hatki, while on-duty and assigned to the 40th Precinct, on or about July 15, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as an auto stripping when it should have been classified as a grand larceny. *[Dismissed]*
P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY
GENERAL
2. Said Lieutenant Andrew Hatki, while on-duty and assigned to the 40th Precinct, on or about July 23, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as a misdemeanor assault when it should have been classified as a robbery.
P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY
GENERAL
3. Said Lieutenant Andrew Hatki, while on-duty and assigned to the 40th Precinct, on or about June 5, 2014, wrongfully caused inaccurate entries to be made in Department records, in that said Lieutenant instructed a subordinate to prepare a Complaint Report and classify the incident as a petit larceny when it should have been classified as a grand larceny.
P.G. 203-05, Page 1, Paragraph 4 - PERFORMANCE ON DUTY
GENERAL
4. Said Lieutenant Andrew Hatki, while on-duty and assigned to the 40th Precinct, on or about June 23, 2014, did instruct a subordinate to not generate a Complaint Report even though Members of the Service responded to a radio transmission of a robbery and spoke to the complainant.

Operations Order #5 of 2012, Page 1, Paragraph 2(a);
P.G. 207-07, Page 1, Paragraph 3
PROPER PRELIMINARY INVESTIGATIONS OF COMPLAINTS,
COMPLAINT RECORDING AND ACCURATE CLASSIFICATION OF
COMPLAINTS; PRELIMINARY INVESTIGATION OF COMPLAINTS

5. Said Lieutenant Andrew Hatki, while on-duty and assigned to the 40th Precinct, on or about July 23, 2014, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant made inaccurate and misleading statements to investigators during official Department interviews.
(As amended)

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

Appearances:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway – Suite 2340
New York, New York 10279

Hearing Dates:

March 3 and April 19, 2016

Decision:

Guilty

Trial Commissioner:

DCT Rosemarie Maldonado

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 3 and April 19, 2016. Respondent, through his counsel, entered a plea of not guilty to the subject charges. The Department called Sergeant Brian Natoli, Sergeant Ronaldy Ventura, Sergeant Willie Briggs, Police Officer Keith Foster and Police Officer Lauren

Acosta as witnesses. Respondent called Deputy Inspector Lorenzo Johnson as a witness and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

At trial, the Department Advocate made an oral application to dismiss Specification 1. This application was granted and Specification 1 was dismissed.

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of the charged misconduct.

FINDINGS AND ANALYSIS

Background

The investigation at issue here commenced on or about July 29, 2014. On that date the Internal Affairs Bureau (IAB) received an anonymous letter alleging that Deputy Inspector Lorenzo Johnson, the commanding officer of the 40 Precinct, was "downgrading crimes." IAB referred the complaint to the Quality Assurance Division (QAD) which then commenced an investigation. QAD determined that between April 2013 and April 2014, the 40 Precinct experienced an 8.0% decrease in index crimes. This decrease correlated with DI Johnson's April 18, 2014 appointment as the commanding officer of the precinct. Four months later, index crimes decreased 17.8% from the previous year. (Tr.17-20)

Sergeant Brian Natoli led the QAD investigation. His team interviewed approximately 62 members of service from the 40 Precinct and audited 1,558 complaint reports issued between May 1, 2014 and August 31, 2014. Natoli testified that of the 1,558 complaint reports audited, 41 were initially found to have been misclassified. Upon further investigation, including the re-interviewing of complainants, it was

determined that only 35 reports were non-clerically misclassified. Review of the Intergraph Computer Aided Dispatch (I/CAD) also revealed that for the relevant time period there were 911 calls for which complaint reports were not generated. Upon review of this data, Natoli found that none of these irregularities were attributable to the commanding officer. Two misclassifications and one failure to report, however, related to Respondent. (Tr. 15-17, 19, 35)

At trial, DI Johnson testified that one of the first things he did as the commanding officer of the 40 Precinct was to designate Respondent as the Special Projects Lieutenant. As such he worked on "team-led enforcement; so special projects is almost the - - like the Special Ops. They ... have almost the same exact roles; they handle different units." (Tr. 178, 179)

Johnson testified with regard to the preparation of complaint reports. He noted that police officers were required to respond to the scene of an incident, prepare a complaint report, and depending on the crime, "reach out to a supervisor." Complaint reports were to be submitted to the precinct desk officer for finalization, "typed up" in the complaint room, and then submitted to the Crime Analysis Unit for an assessment of completeness and accuracy. Any discrepancies or irregularities detected by Crime Analysis were to be reported to the unit supervisor. According to Johnson, complaint reports were to be entered into the OMNI system expeditiously, but acknowledged that in April 2014 there were data entry delays. (Tr. 33-35, 37, 151, 179, 180, 185)

Johnson denied exerting any pressure on Respondent, or any other member of the command, to keep the reporting of index crimes down. Moreover, no member of service reported to him that Respondent was pressuring them to downgrade or reclassify crimes.

In fact, DI Johnson praised Respondent as a competent, hardworking and diligent worker who loved to help others. (Tr. 184, 185, 186)

Respondent testified that Johnson designated him as the Special Projects Lieutenant because of his experience in similar posts. He explained his expectation that sergeants responding to jobs “conduct the investigation, understand what they have in front of them, speak to the witness, and come up ... [with] a proper classification of what they have in front of them.” Respondent denied ever exerting any pressure on his subordinates to keep index crime reporting down. (Tr. 212)

Specification 4:

Instructing subordinate not to generate a complaint report

Respondent is charged with instructing his subordinate to not generate a complaint report for an armed robbery. For the reasons set forth below, I find Respondent guilty of misconduct.

The undisputed facts are as follows. On June 23, 2014, Sergeant Ronald Ventura was assigned to patrol supervisor duties. At about 0553 hours, he arrived at the scene of a 10-30 “robbery in progress.” A sector car was already at the location and was canvassing the area for suspects with the complainant. At some point during the canvass, the complainant explained that he had to leave for work. After speaking to the complainant, Sergeant Ventura informed a supervisor on the scene that the complainant had participated in a canvass but was in a “hurry” to leave for work and would not go to the precinct to continue the investigation. A complaint report was not generated to document the robbery and the job was finalized as a 10-90Y “unnecessary.” (Tr. 70, 73, 75, 81, 83, 89, 91, 239-241)

In dispute is whether Respondent instructed Sergeant Ventura to not generate a complaint report for the robbery. What follows is a summary of the evidence presented at trial.

Sergeant Ventura testified that Respondent and DI Johnson responded to the scene. He informed Respondent of the circumstances of the robbery and that there had been an unsuccessful canvass of the area. He further related to Respondent that the complainant had become "uncooperative" because he was going to work. It was at this point that Respondent instructed Sergeant Ventura to "go 98" -- resume patrol. To Ventura, "go 98" signified that his superior officer wanted him to leave the scene and resume patrol without taking any further action -- including the filing of a complaint report. For a job involving robbery, Ventura would have expected Respondent to "...tell me, okay, let's bring him to the precinct, bring him to the detective squad, show him a photo array, photographs, and you know, pursue it a little bit more further." Because of Respondent's directive, Ventura did not generate a complaint report and told the sector cars to resume patrol. Sergeant Ventura documented Respondent's directive in his Activity Log. (Tr. 68, 70, 73, 75, 81, 83, 85-87, 89, 91)

Respondent testified that he did not recall this particular incident. He agreed, however, that he had responded to similar jobs with Ventura on numerous occasions. Based on Ventura's testimony, Respondent explained it would not have been unusual to have told Ventura to "go 98" because:

[I]f you're telling me that he did not want to go back to the Squad, that means you would have taken -- you would have taken a 61 because you've spent 20 minutes on a canvass with your police officers -- I would assume that you would have taken a 61; and that he doesn't want to go back to the squad, that means that, okay, then let him go to work and this guy will contact him and follow up with him later on.

He further explained that in a situation such as this "go 98" means "let the complainant go to work, go 98, drop your paper work off ... [and] the squad will contact them later on." (Tr. 239, 241, 242, 258)

DI Johnson also testified that he had no recollection of this incident. He noted, however, that if he had responded to the scene of a gun point robbery and the complainant was still present but needed to go to work, he would have a complaint report prepared with a working telephone number and an address so that the precinct detective squad could conduct their investigation at a later time. Johnson emphasized that he would never instruct his subordinates to not prepare a complaint report and had not heard Respondent do so. (Tr. 199, 200)

After reviewing the evidence presented at the hearing, and assessing the credibility of witnesses, I believed Sergeant Ventura's testimony that he informed Respondent that the complainant was "uncooperative," that Respondent replied by telling him to "go 98" and that it was because of Respondent's directive to resume patrol that a complaint report was not generated. First, at trial Ventura presented as an honest and straightforward witness with no discernable interest in the outcome of this case. In contrast, Respondent's account seemed both calculated and self-serving. More importantly, Ventura's version of events was logical and comported with common sense and general police experience. It is important to note that Respondent instructed Ventura to resume patrol immediately after Ventura told him the complainant was no longer "cooperative." Within this context, Respondent knew or should have known that his order could be given no other reasonable interpretation. As Ventura explained,

Respondent "told me to go 98, I took it as ... resume patrol, ... don't take the 61 and just ... resume. Continue with your next assignment." (Tr. 86)

In sum, an explicit directive to not file a complaint report was unnecessary to prove this case. Despite Respondent's protestations to the contrary, his directive to "go 98" was clearly intended to serve the same purpose. Accordingly, I find Respondent Guilty of Specification 4.

Specification 3:
Inaccurate entries/crime misclassification

Respondent stands accused of wrongfully causing inaccurate entries to be made in Department records which resulted in the downgrading of a crime. For the reasons set forth below, I find Respondent guilty of the charged misconduct.

The following facts are undisputed. On May 27, 2014, Central Dispatch transmitted a "past burglary" call at the [REDACTED] on [REDACTED] in the Bronx. A number of officers responded to the scene, including Police Officer Prieto, Sergeant Glover, DJ Johnson and Respondent. At the site, the complainant, Fausto Balbuena, reported that "someone had broken into one of his storage containers and [had] stolen multiple items." The complainant filled out a Complaint Report of Lost or Stolen Property in which he estimated the value of the missing property to be \$780. Based on this information, Police Officer Prieto completed the complaint report and designated the crime as a petit larceny. (Tr. 23-25, 35, 48, 148, 151, 192, 194, 226, 227; Dep. Ex. 2)

A few days later, the complainant visited the 40 Precinct to obtain a copy of the report. When Police Officer Prieto was unable to find the original in the online database

(OMNI), he prepared a handwritten duplicate. Although the duplicate listed the missing items, the monetary value of each item was left blank. (Tr. 24-25, 48, 38; Dep. Ex. 1)

The duplicate complaint report was subsequently reviewed by Officer Lauren Acosta, a 40 Precinct crime analysis officer. After noticing the missing values, she followed procedures and re-interviewed the complainant. Officer Acosta obtained the missing information, added the monetary values reported by Mr. Balbuena to the complaint report, calculated the total loss to be over \$1,000 and reclassified the crime as a grand larceny. (Tr. 147-148, 151, 165; DX 1)

The supervisor of the Crime Analysis Unit, Sergeant Smalls, was unavailable to review Officer Acosta's crime reclassification because he was on vacation. Instead, she notified Respondent of the change. Respondent recalled the incident and retrieved the original handwritten complaint report that was completed on the day of the incident. Respondent then delivered it to Officer Acosta noting that the original report estimated the property loss at less than \$1,000. (Tr. 151, 152, 156, 229-232; Ex. 1)

What occurred next is in dispute. Officer Acosta testified that she could not recall what, if anything, Respondent said to her when she pointed out the discrepancy between the crime classification and property value reported by the complainant. Acosta returned to her office and about "30 seconds" later Respondent followed. According to Acosta, at that time Respondent informed her that he had found the original complaint report in the clerical office with the values already listed at less than \$1,000. Respondent told Acosta to use the original report, which classified the crime as petit larceny, because it was "the correct one." (See DX 2) Acosta copied both the grand larceny and petit larceny complaint reports because there had been too many changes made and because she was

the last person "going in the system to change the report...[and] it was going to come back" to her. At the time she did not know that the original report had been prepared on May 27 and that a second report had been prepared when the complainant visited the precinct requesting a copy. At some point after June 5, Acosta was removed from her position as a crime analysis officer. (Tr. 151, 152, 156, 174; DX 3)

Sergeant Natoli testified at trial and corroborated much of Officer Acosta's account. (Tr. 23-25, 48, 38, 39, 59, 63) He also testified that at the scene of the incident, Respondent told Glover that the crime should be classified as a larceny, but did not specify whether it should be designated as petit or grand. (Tr. 54, 57, 58)

DI Johnson testified that he drove to the scene of the crime with Respondent and remained there for approximately 20 minutes. After gathering information he concluded that this was a petit larceny because the owner had obtained the unit at a storage auction and when he "looked inside the door. ...[i]t looked like a lot of old property...[j]unk." (Tr. 192, 194, 195, 203-205)

Respondent testified that as he was driving DI Johnson he received a phone call from Sergeant Glover asking for "guidance as to whether to classify this [case] as a burglary or a larceny." Johnson went to the scene because this was the second storage facility theft that day. Although they did not speak to the owner, they determined that the items inside the unit were "very old." According to Respondent, he told Sergeant Glover that this should be classified as a larceny and not a burglary. Whether it was a petit or grand larceny would be determined by the value of the missing items. (Tr. 226, 227)

According to Respondent, he had no further involvement with this complaint report until June 5, 2014, when Officer Acosta informed him of a misclassified grand

larceny report. Respondent reviewed the complaint and realized that he had been at the scene of this incident. He was aware that a complaint report had already been prepared for this incident and searched for it in the complaint room. After about an hour and a half, Respondent found the original report in the "bottom of the complaint report pile." (Tr. 229, 230, 232, 233)

Respondent brought the original report to Officer Acosta and instructed her to use the complaint report prepared on May 27 and "DD-5" it to a grand larceny if necessary so that there was a "paper trail." Respondent explained that at times there would be multiple reports generated for one incident and he "would have to go back and get rid of complaint reports and try to catch up to the original incident." (Tr. 233, 236, 237, 263)

For the reasons set forth below I credit Officer Acosta's account that Respondent wrongfully caused her to input the May 27 complaint report classifying this crime as a petit larceny. First, Acosta's demeanor at trial was straightforward and honest and she seemed to have no obvious interest in the outcome of this case. For example, no evidence was proffered that Acosta harbored any animosity against Respondent or was otherwise biased against him. In fact she was the one who unwittingly reached out to Respondent to review her findings when her immediate supervisor was absent.

Second, Acosta recollected the relevant facts with clarity and detail. She specifically recalled re-interviewing the complainant, recording the information conveyed concerning the missing values and correcting the report's classification of the crime. Given the lack of ambiguity in her account, I do not believe that she merely misunderstood Respondent's alleged instructions to "DD-5" the original report.

Third, Acosta convincingly conveyed to this tribunal that she was troubled by Respondent's directive to use the original report classifying the crime as a petit larceny. It is important to note that although she obeyed an order she considered problematic, Acosta kept copies of the relevant reports to document the discrepancy and how it came about.

In sum, Respondent's assertion that he searched an hour and a half for the original report, delivered it to Acosta and then instructed her to "DD-5" it to reflect the grand larceny upgrade had the ring of an after the fact justification. Accordingly, I find that the preponderance of the credible evidence proved that Respondent is guilty of the misconduct charged in Specification 3.

Specifications 2 and 5:

Crime misclassification/Inaccurate and misleading statements

Specification 2 alleges that Respondent wrongfully caused inaccurate entries to be made in Department records which resulted in the downgrading of a crime. Specification 5 alleges that Respondent made inaccurate and misleading statements during a Department interview concerning this incident. For the reasons set forth below, I find Respondent guilty of the charged misconduct.

It is undisputed that at approximately 1700 hours on July 23, 2014, Central Dispatch sent out a call for a 10-34 "assault in progress." The location was a store at [REDACTED]. Police Officers Foster and Irizarry responded to the initial call. At the scene, the complainant told the responding officers that "individuals entered his store removing property off the shelves, proceeded to exit, at which time [he] tried to stop an individual and was punched." The officers determined that the crime should be classified as a robbery and called their patrol supervisor, Sergeant Willie

Briggs. Briggs responded to the scene and after interviewing the complainant, agreed with the classification. Sergeant Briggs instructed the officers to conduct a canvass and then drive the complainant to the detective squad to be interviewed and shown pictures of possible suspects. Briggs also called DI Johnson on his cell phone to inform him of the robbery. (Tr. 25-27, 96-99)

After Sergeant Briggs resumed patrol near the location of the robbery, Respondent called, asked for his location and told him to stand by. At the time he received the call, Briggs was on [REDACTED], about one block away from the site of the robbery. Respondent met Sergeant Briggs on [REDACTED] and discussed the complaint. (Tr. 100)

At issue is whether Respondent directed Sergeant Briggs to downgrade the crime from a robbery to an assault. During the trial, Briggs testified that he told Respondent that a "male was struck, punched in the face, not serious, items taken." Based on the complainant's statement, Briggs informed Respondent that the crime was going to be classified as a robbery. According to Briggs, Respondent disagreed and replied, "this is nothing, make it an assault." Briggs insisted that a robbery had taken place, but Respondent claimed that "...this is from the CO. This is what he wants." Briggs then instructed his officers that, as per the lieutenant and commanding officer, the incident would be classified as a misdemeanor assault. Police Officer Keith Foster, told Briggs he was having a "problem" writing the report as an assault. Briggs assisted by composing a draft which Foster then used to complete the complaint report. (Tr. 25-27, 96-104)

On cross-examination, Briggs conceded that in 2015 he was removed from his position as the conditions sergeant and placed on patrol because he had misclassified

another crime. In that incident Briggs had classified a crime as a misdemeanor assault and petit larceny. His commanding officer made the determination that the crime constituted a robbery. (Tr. 119, 120, 121)

At trial, Officer Foster corroborated much of Sergeant Briggs's account. Specifically, Foster testified that he met with the complainant at [REDACTED]. The complainant informed him that three males he recognized from the neighborhood came into his store and began taking items. The complainant tried to detain them when they attempted to exit without paying. That is when he was struck by one of the perpetrators. Officer Foster confirmed that he notified Sergeant Briggs that a robbery had taken place and that Briggs concurred with Foster's assessment. (Tr. 130, 131, 132)

Foster testified that he prepared a complaint report for a robbery. Briggs called, however, to advise him that the classification had been changed by their supervisors. Foster was uncomfortable about the reclassification and asked to meet with Briggs. During the meeting Foster asked Briggs to write the new narrative for the complaint report. (Tr. 133, 134, 135, 141, 143)

Respondent testified that he was on patrol when he heard a job come over the radio as an assault in progress. Soon thereafter, he heard that Sergeant Briggs was responding as the patrol supervisor. When he heard nothing further on the radio, Respondent decided to call Briggs to get an update. He met with Briggs near 137 Street and [REDACTED]. When he arrived at [REDACTED], two males approached to tell him that the owner of the store owed them money and was giving them "a hard" time. According to the men, an argument ensued and the owner "called the police saying that he was being robbed." (Tr. 213, 214, 216, 217)

Respondent walked the two individuals to the store and interviewed the owner. The owner first accused the two men of "trying to rob" him, but then admitted that they used to work for him. Respondent further told the store owner that "you just need to pay these individuals what you owe them for the work and they won't come back and bother you " He told the two men that they should call the police if they needed to collect money. (Tr. 218)

While Respondent interacted with the men inside the store, Briggs remained parked on [REDACTED]. Respondent then instructed Briggs to conduct a proper investigation because the two men had stated that they were arguing with the store owner over money they were owed. He further instructed Briggs to re-interview all the parties involved, "get the whole story, understand what happened, look at the video, and then once you come to your determination of what it is, make your classification." Respondent did not document the results of his interview in his Activity Log. (Tr. 219, 220)

Respondent returned to the precinct where he told Johnson that although the job came over as an assault, it was really a dispute "over money being owed by the store owner to the workers that he hasn't paid out." Respondent testified that he had responded to [REDACTED] about 10 times before this incident and once more a month after. (Tr. 225)

Respondent acknowledged at trial that he now knew that the [REDACTED] store was not the location of the incident that the sector had responded to. He insisted, however, that on July 23, 2014, he believed that [REDACTED] was the correct location because Briggs and the two men were there. He conceded that he did not enter [REDACTED] that day nor did he speak to that store owner there. (Tr. 220) He further admitted that after being served with the first set of Charges and Specifications,

he realized that the address was incorrect but he did not take any remedial action. (Tr. 249, 251, 253, 256, 257)

Johnson testified that he recalled the incident generally, but was not clear on details. According to Johnson, Respondent reported to this incident because it was part of his responsibility to identify and respond to serious crimes. He could not recall if it was in person or by telephone that Respondent informed him that this crime was classified as an assault. (Tr. 188, 189, 191, 201)

For the following reasons, I credit the testimony of Sergeants Briggs. Despite his transfer for a subsequent crime misclassification, having observed Briggs' demeanor, I found him to be a genuine and truthful witness. In fact, his dismay was still palpable as he related Respondent's statement that, "this is nothing, make it an assault." Especially troubling is that, despite Briggs' insistence that this crime was a robbery, Respondent told him, "This is from the CO. This is what he wants." I further credit Briggs' testimony that, as a result of this clear instruction from his supervising lieutenant, he ordered Foster to reclassify this crime as a misdemeanor assault. Accordingly, I find Respondent guilty of the misconduct set forth in Specification 2.

Specification 5 charges Respondent with making false and misleading statements during his QAD interview regarding the complainants he interviewed at the scene of the robbery. In making the above findings, I discredited Respondent's testimony that he erroneously told Briggs to re-interview based on a conversation with the wrong store owner and employees.

At his February 11, 2015 Department interview, Respondent told QAD investigators that he had spoken to the store owner who had reported the robbery.

Furthermore, he reiterated that Briggs was present and remained in the RMP while he interviewed the store owner and two male complainants. When he returned, Respondent then instructed Briggs to re-interview the complainants and the store owner because he was "getting a completely different story."

Respondent concedes that when QAD presented him with a complaint report of this incident, he recalled responding to [REDACTED] for a dispute not realizing the actual address was [REDACTED]. Respondent admitted, however, that before his interview with QAD, he was given a copy of the complaint report which listed [REDACTED] [REDACTED] as the location of the incident and did not inform QAD of his error. (Tr. 222, 225, 243)

It is undisputed that Briggs and Respondent met on [REDACTED], about one block away from the actual incident. I do not believe, however, that once there he interviewed a completely different store owner who was engaged in a wage dispute with his employees. Instead, I found this to be a self-serving account used to justify Respondent's wrongful order to misclassify the crime, even over a sergeant's objections.

Moreover, I believed Briggs' testimony that he was at [REDACTED] waiting for Respondent to arrive, spoke to him at that location, was told to classify the crime as an assault and that they left that location simultaneously. I also credited Briggs' assertion that he did not see Respondent get out of his vehicle during their encounter on Brook Avenue. In sum, Briggs' credible account rules out the possibility that Respondent interviewed the wrong people in Briggs' presence and then mistakenly directed Briggs to change the crime classification based on that interview. Accordingly, I find Respondent guilty of the misconduct set forth in Specification 5.

PENALTY RECOMMENDATIONS

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 June 30, 1992. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate seeks a penalty of thirty (30) vacation days and one year dismissal probation for the misconduct set forth in the four specifications. I believe that a higher penalty is warranted. Respondent has been found guilty of ordering three separate subordinates to be inaccurate in their reporting of crime complaints. In addition, Respondent made misleading statements during his Department interview concerning one of those incidents. This constitutes a troubling pattern of very serious misconduct by a long-time supervisor. The negative impact of issuing wrongful orders in a paramilitary institution, which requires immediate compliance, is especially egregious. Moreover, Respondent himself has been disciplined by the Department on three prior occasions -- most recently in 2015.

Single instances of crime misclassifications have recently received penalties in the range of 10 to 15 vacation days. In *Case Nos. 2014-11821, 2014-11822* (May 27, 2016) an eight-year police officer and a nine-year police officer forfeited ten (10) vacation days each for wrongfully preparing or causing to be prepared documents classifying a complaint as lost property, when it should have been classified as larceny. See *Disciplinary Case No. 2014-12455* (May 28, 2015) (Ten year sergeant, with one prior disciplinary adjudication, negotiated a penalty of fifteen (15) vacation days for (i) improperly directing subordinate police officers not to prepare a complaint report for a

grand larceny; (ii) inaccurately finalizing a radio run with the Central radio dispatcher as 10-90Y "uncooperative complainant" and (iii) responding to a radio run that involved the theft of a cellular phone and failing to notify the Detective Squad to respond to the scene.); *Disciplinary Case No. 2014-12515 (April 3, 2015)* (Nine-year lieutenant with no prior disciplinary record negotiated a penalty of 10 vacation days for failing to ensure that his subordinates prepared a Complaint Report for a robbery after speaking to the complainant.) The instance case, however, involves three such instances of misconduct. Thus, the penalty must take into account these multiple violations.

In addition, making false statements to Department investigators has consistently resulted in a penalty of dismissal probation. For example, in *Case No. 2015-14202* (April 7, 2016) an 11-year police officer was placed on one-year dismissal probation for making inaccurate statements to Department investigators. *See also Case No. 10370/13* (January 29, 2015) (Officer placed on one-year dismissal probation for making false and misleading statements during his Department interview)

Accordingly, it is recommended that 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 he forfeit thirty-five (35) vacation days.



Respectfully submitted,

Rosemarie Maldonado
Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT ANDREW HATKI
TAX REGISTRY NO. 901671
DISCIPLINARY CASE NO. 2015-13822

Respondent was appointed to the Department on June 30, 1992. His last three annual performance evaluations were 5.0 overall ratings of "Extremely Competent" in 2015 and 2014 and a 4.5 rating of "Extremely Competent/Highly Competent" in 2013. He has nine medals for Excellent Police Duty, three medals for Meritorious Police Duty, and two Commendations. [REDACTED]

In 2005, Respondent received a warn and admonish for wrongfully frisking/searching an individual, failing to provide his name/shield number when requested by an individual, and for failing to prepare a stop question and frisk report.

In 2006, Respondent forfeited 30 vacation days for failing to sign in and out at the beginning and at the end of his scheduled tour on numerous occasions, and for submitting overtime reports, on numerous occasions, for overtime for which there was no proof that such overtime was actually performed.

In 2015, he forfeited five vacation days for failing to sign in or out of the precinct command log on three occasions.

He was placed on Level 2 Disciplinary Monitoring between July 25, 2013 and December 1, 2015 as a result of Charges and Specifications.

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trials