



POLICE DEPARTMENT

March 9, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Richard Lopez
Tax Registry No. 936983
Transit Bureau District 1
Disciplinary Case No. 86194/10

The above-named member of the Department appeared before me on February 17, 2012, charged with the following:

1. Said Police Officer Richard Lopez, while on-duty and assigned to Transit District 1, on or about December 1, 2009, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that he affixed his signature to a Criminal Court complaint that he did not correctly review and which indicated that he had received the information he was swearing to from the complainant, when in fact he observed the incident.

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

2. Said Police Officer Richard Lopez, while on-duty and assigned to Transit District 1, on or about December 1, 2009, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully caused an inaccurate instrument to be filed with the New York County Criminal Court.

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 Respondent was represented by Michael Martinez, Esq.

COURTESY • PROFESSIONALISM • RESPECT

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

The facts of this case are not in dispute. On December 1, 2009, Respondent and his partner, Police Officer Jones, were on plainclothes patrol in the subways. They noticed a man whose behavior was unusual. He would travel uptown, return downtown and then repeat the pattern. Respondent noted that this is not a typical subway rider who gets on the train and goes in one direction toward a destination. They also noticed that this man, later learned to be Person A, would skip trains that were empty in favor of ones that were crowded.

Respondent and Jones followed Person A for over an hour. At some point during their travels on a crowded train, Respondent saw Person A, who was fully clothed, push his pelvis into the buttocks of a woman, later learned to be Person B, "humping her" as he stood behind her. Respondent could also see that Person B was very uncomfortable with this. At the next station, he ordered Person A off the train. As he did so, he noticed that Person A had an erection. As Respondent got Person A off the train, Jones asked Person B to get off the train as well. Separate from Respondent and Person A Jones spoke with Person B, who agreed to cooperate with the prosecution of the case.

Person B explained to Jones that she did not scream out on the train because she was afraid and that she was happy that the police were there.

Later that evening, Respondent spoke with an assistant district attorney (ADA) on the telephone regarding the preparation of the criminal court complaint. He explained to the ADA that he had witnessed the crime but that he did not speak with Person B and that Jones had done so.

He was then faxed the complaint which he signed and returned to the ADA. The problem at the core of this case is that the complaint stated in relevant portion that he was informed by Person B about Person A's actions and to her lack of consent (Department's Exhibit 1).

Respondent had started his tour at about 7:30 that morning. The arrest had occurred at about 6:00 p.m. and he was on overtime when he received the complaint from the ADA at about 11:00 p.m. He agreed that it had been a long day, that he was tired and that he did not review the complaint as carefully as he should have.

Respondent learned of the error while he was at the district attorney's office on December 22, 2009. As he reviewed the complaint with the ADA, they realized that it was not accurate. The ADA told him that this was not a problem and re-drafted the complaint.

Person A pled guilty to sexual abuse in the third degree, a class B misdemeanor, on January 15, 2010 and was sentenced to "time served" [Respondent's Exhibit (RX) C].

Interviews with the representatives of the district attorney's office confirm that Respondent noticed the error when conferring with the prosecuting attorney in Person A's case. Further, the representatives of the district attorney's office indicated that they

would not prosecute a case against Respondent as he had made an unintentional error in signing the complaint (see RX A and B).

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 March 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommended a penalty involving the loss of 30 vacation days. Respondent has asked for a lesser penalty. Each side has cited various cases as precedent justifying the penalty request they have made. The Department has cited two cases where a penalty of 30 days was imposed while Respondent cited a case where a 10- day penalty had been imposed.

The two cases cited by the Department are materially different than the instant case. In Disciplinary Case No. 3247/10, the respondent had claimed, in a criminal court complaint, to have recovered metal knuckles when, in fact, he was not even present on the scene at the time. In Disciplinary Case No. 84991/09, the respondent not only attested to recovering drugs which he did not recover, but also testified "incorrectly" in court resulting in the dismissal of the case.

In the instant case, Respondent made the arrest himself and actually witnessed the crime. Indeed, because Respondent not only observed Person A's conduct but Person B's

reaction, which evinced lack of consent, it is conceivable that a criminal court information could have been drafted based solely on Respondent's observations.¹

Respondent has cited Disciplinary Case No. 84684/08, which is also factually different from the instant case. What is worth noting about that case is that there, as in the instant case, the Department had recommended a penalty of 30 vacation days. In rejecting the Department's recommendation and suggesting a lesser, 10-day penalty, which was adopted by the police commissioner, the assistant deputy trial commissioner took note of the facts and circumstances that led up to the inaccurate complaint. What prior case law suggests, therefore, is that every case needs to be evaluated on its own unique merits.

It should be noted that this Court recognizes that there is a deep and abiding interest in insuring that sworn documents submitted by members of the service are accurate. In some cases involving inaccurate criminal court complaints, penalties have been much more substantial than what has been proposed by the Department in this case. Again, this suggests that each case requires its own analysis and, because the circumstances can vary greatly, the penalty range has been broad.

Examining the merits of this case, it becomes clear that there are a number of ameliorating factors. The first of these is that the arrest of Person A resulted from outstanding police work by Respondent and Jones. That work led to the identification and apprehension of a sexual predator who was trolling the subways for victims. The perpetrator, Person A, was convicted of a crime as a result of this arrest.

Respondent is an active officer with many arrests. He testified that he had made over 300 arrests in his relatively short career and this was verified by examining his

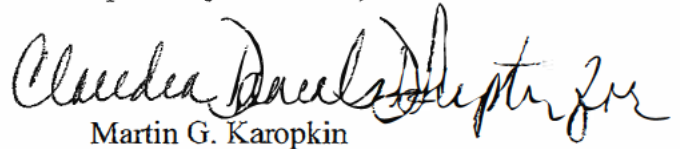
¹ A criminal court information is a non-hearsay accusatory instrument.

personnel records (see confidential memorandum attached hereto). During these proceedings, it was learned that the investigation of this matter included a review of other complaints signed by Respondent and no other instance of error was uncovered. Further, there is no question that this was an error rather than an intentional misrepresentation. Respondent did not and could not have benefited from this act. Moreover, the operative allegation against Person A in the complaint was accurate and had been witnessed by Respondent.

Considering all of these factors, it would appear that Respondent's error in this case was an isolated incident in the career of a very active and capable police officer.

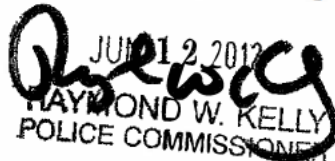
For all of these reasons this Court recommends a penalty involving the loss of 10 vacation days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED



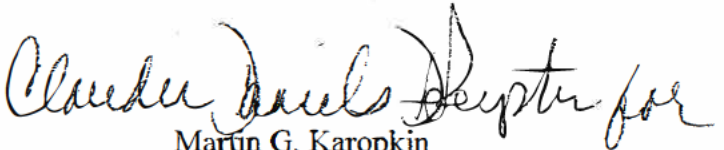
JUN 12 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RICHARD LOPEZ
TAX REGISTRY NO. 936983
DISCIPLINARY CASE NO. 86194/10

In 2009 and 2010, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 4.0 [REDACTED] seven years of service, he has effected 322 arrests. [REDACTED]. Respondent has no prior formal disciplinary

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials