



POLICE DEPARTMENT

March 9, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Pedro Rodriguez
Tax Registry No. 942490
Military & Extended Leave Desk
Disciplinary Case No. 85553/09

The above-named member of the Department appeared before me on February 9, 2012, charged with the following:

1. Said Police Officer Pedro Rodriguez, assigned to the Military Extended Leave Desk, on or about June 10, 2009, inside of 1 Flushing Park East, within the confines of the 110 Precinct, Queens County, with criminal negligence, caused physical injury to another person by means of a dangerous instrument, to wit: a concrete bench. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
N.Y.S. Penal Law Section 120.00(3) ASSAULT IN THE THIRD DEGREE

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

Respondent, through his counsel, entered a plea of Guilty to the subject charge 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.

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SUMMARY OF EVIDENCE IN MITIGATION

Respondent is a five-year member of the Department currently on active-duty military leave as a non-commission military police officer in the United States Army, where he has served for 13 years and has achieved the rank of staff sergeant. Respondent has served in combat operations in Iraq and Afghanistan.

On June 10, 2009, Respondent, who was assigned to the Military and Extended Leave Desk, had just come back from serving 12 months in Iraq. He was off-duty and at Flushing Meadow Park watching one of his children play baseball. Respondent stated that at the time he had two children and his wife was three to four weeks pregnant.

At some point, his wife became involved in a verbal argument with **Person A** **Person A** **Person A** **Person A** who was the director of the league. **Person A** had approached his wife in regards to a debt of \$50 for candy that his children were supposed to sell for the league. His wife explained to **Person A** that she had already paid that money to **Person A** wife, who had collected it prior to the summer league beginning. The verbal altercation, Respondent said, got a little heated. Respondent was off to the side watching his son play, and his wife had walked away with his other son.

When Respondent's wife came back, **Person A** approached her again, this time in a more irate manner. Respondent said that **Person A** who was waving a cell phone, yelled at his own wife over the phone. Respondent testified that **Person A** then picked up his pace until he had reached Respondent's wife. **Person A** then placed his briefcase between his legs and began screaming at Respondent's wife while flailing his hands in the air.

At that point, Respondent started to walk over when a few of the coaches grabbed

him to calm him down and told him that they would settle it. At that time, Respondent testified, he saw Person A reach back with what looked like a balled up fist with which Respondent thought he was going to hit his wife. Respondent testified:

At that point, I broke free from the gentlemen that were holding me, and all I wanted to do was basically get him away from my wife. I knew she was pregnant

So as soon as I got to him, I pushed him, and he had a briefcase between his legs and he basically tripped, fell forward and landed on a park bench.

Respondent stated that he was running at full speed when he pushed Person A on the top of his shoulder blades. Respondent acknowledged that he pushed him hard. Respondent said that he did not intend for Person A to strike the bench. Respondent again explained that the reason he pushed Person A was to get him away from his wife. Respondent noted that he could have easily punched him but he did not. He figured pushing him away would be the best way to get him away from his wife.

Respondent testified that once Person A went down he saw him hit the bench and start bleeding. He gathered his wife and children and went over to his vehicle where he waited for the responding officers to arrive.

Respondent stated that one of the coaches immediately called 911 because Person A was bleeding badly. Respondent asserted that once he pushed Person A to the ground he never attempted to make any further contact with him. Also, Respondent stated that he never attempted to leave the scene and instead waited for responding units to arrive. Respondent said that once the first units arrived at the scene, he immediately identified himself to the police officers and told them he was involved in what happened.

He explained to them that Person A was on the ground bleeding and they should get the Emergency Medical Service there as soon as possible.

Officers on scene realized the extent of Person A injuries and called for a supervisor. A lieutenant came and placed Respondent under arrest. Respondent was initially charged with a felony, but eventually was able to plea to a reduced charge of assault in the third degree.

Respondent explained that there was a civil lawsuit in this matter. He noted that his insurance would not cover him for a reckless assault but did cover his negligent conduct. The lawsuit was settled for \$49,576, which the insurance paid, and that he had to pay \$4,420 restitution for medical costs out of his own pocket prior to the district attorney offering the reduction of the charge to a misdemeanor. Also, Respondent was ordered to do one week's worth of anger management classes or training which he can do as soon as he is done with his military service.

The criminal case against Respondent also affected his military status. Respondent stated that his top military clearance was rescinded for eight or nine months until the disposition of the case was brought forward, then he had to go through a new investigation process, after which he did receive clearance again.

When asked if he could have handled the situation differently, Respondent said that, at the time, he thought the best thing to do was to push Person A. On reflection, he said he might have given Person A a bear hug, or pulled him away, or pulled his wife away. He said he really did not intend for Person A to be harmed in any way. Respondent acknowledged, in hindsight, perhaps there could have been other ways to settle the matter. He acknowledged that he reacted the way he did and a man was injured

because of it.

Respondent testified that, due to all the stress that followed, his wife had a [REDACTED] about a month after the incident.

On cross-examination, Respondent acknowledged that the incident occurred on June 10, 2009, in Flushing Meadow Park and the bench [Person A] hit was made of wood and concrete. Respondent denied that immediately following the incident, he walked away from the location; he just walked towards his vehicle, located no more than 50 feet away, in the parking area.

Respondent agreed that prior to incident, [Person A] was arguing with his wife. Respondent denied that prior to pushing him, [Person A] had dropped his cell phone and was bending over to pick it up when Respondent pushed him. Respondent admitted "had he been bending to pick it up when I pushed him, I never would have been able to push him. He stands about six inches shorter than I am." He acknowledged that if [Person A] were bending over when he pushed him, he (Respondent) would have went over [Person A]

Respondent disputed the notion that his wife knocked [Person A] cell phone out of his hand causing him to bend over. Respondent explained that [Person A] was waving his cell phone in front of his wife's face several times. According to Respondent, [Person A] dropped his phone at least five or six minutes before [Person A] cocked back to hit his wife, prompting Respondent to push him.

Respondent acknowledged that he was 15 to 20 feet away from [Person A] before he pushed him. Respondent agreed that during the time it took to cover the distance from where he was to [Person A] [Person A] did not strike his wife. Respondent admitted that it

took him less than three seconds to cover that ground. Respondent claimed that, at the time, Person A had his hand cocked back and he perceived it to be in a threatening manner. The dispute between his wife and Person A happened right behind the dugout where the children sit, near a chain link fence.

Additionally, Respondent acknowledged that Person A had placed his briefcase between his legs. He indicated that he intended to push Person A and, at that time, was not concerned that Person A might trip. He stated that he was pushing him away from his wife; he did not think he was going to trip over the briefcase because it was between his legs. He indicated that Person A tripped on the briefcase, stumbled forward, and hit the bench. Respondent acknowledged he did not think the briefcase would make Person A fall.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 20, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent and his wife were at a little league game. His wife and one of the little league officials, Person A got into a verbal dispute, apparently regarding money that she had collected. Respondent, who was some distance away, saw the argument and became concerned. He was restrained by others from intervening. At some point, he saw Person A flailing his arms, raising his level of concern to the point that he believed

Person A would strike his wife, who was pregnant. Respondent raced over and pushed **Person A** who tripped over a briefcase he had between his legs and fell, striking a concrete and wood park bench. **Person A** suffered a broken nose and lacerations that required 85 stitches.

Respondent remained in the vicinity and when on-duty officers responded, he properly identified himself. He was arrested and charged initially with felony assault. In criminal court Respondent pled guilty to assault in the third degree, a misdemeanor, under Penal Law section 120.00 subdivision 3. That subdivision deals with criminally negligent assault. Respondent was sentenced to a one-year conditional discharge. He was required to pay restitution of approximately \$4,000 to **Person A**. He was also required to complete an anger management class which he has been given extra time to complete because he is currently on active military duty.

The Department has recommended a penalty of 32 days time served on suspension, the loss of an additional 28 vacation days and dismissal probation. Respondent believes a lesser penalty is appropriate and notes several mitigating circumstances.

Among these are the fact that he was acting in defense of his wife and that he did not commit an intentional assault but one based on criminal negligence, which is a lesser culpable mental state. Respondent has also set forth his long record of military service.

In endeavoring to assess an appropriate penalty in this case, it should be noted that Respondent has been convicted by his plea of a class A misdemeanor assault. Further, he caused substantial injury to **Person A**. It is the view of this Court that the conviction and level of injury might well justify his being separated from the Department.

The lesser penalty proposed by the Department, it would seem, already incorporates the mitigating factors Respondent has put forth. It should be noted in this regard that while it is true that criminal negligence is a lesser culpable mental state than an intentional or reckless act, it still encompasses a serious wrong. Criminal negligence as defined by the Penal Law (section 15.05 subdivision 4) involves a “failure to perceive a substantial and unjustifiable risk.” The statute further requires that the failure to perceive that risk “constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.”

The penalty proposed by the Department is, under all the circumstances, fair. Police officers, as part of their duties, are often faced with potentially violent situations. It is critical that officers be able to perceive the risks associated with the use of force and temper their conduct accordingly. Given the failure to perceive the risk of injury, a period of monitoring is appropriate. Additionally, in virtually every Department case involving an assault where the subject officer has been allowed to remain with the Department, a period of supervision has been imposed.

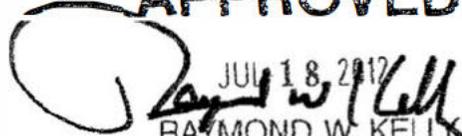
Therefore, this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner’s discretion and may be terminated at anytime without further proceedings.

Respondent was suspended without pay for 32 days subsequent to his arrest pursuant to Civil Service Law section 75 subdivision 3. That section allows an employee to be suspended “pending determination of charges” up to 30 days. These days may be,

but need not be, credited to the post-trial penalty. It is recommended that Respondent not be credited with 30 pretrial suspension days in his post-trial penalty. Further, this Court recommends that the Respondent forfeit 30 penalty days to consist of two days previously served on suspension without pay and 28 vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner - Trials

APPROVED

JUL 18 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PEDRO RODRIGUEZ
TAX REGISTRY NO. 942490
DISCIPLINARY CASE NO. 85553/09

Respondent received ratings of 4 “Highly Competent” and 3 “Competent” on his last two performance evaluations. [REDACTED]

[REDACTED] He has no prior disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials