



POLICE DEPARTMENT CITY OF NEW YORK

March 1, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer William Beattie
Tax Registry No. 938046
Critical Response Command
Disciplinary Case No. 2015-14618

Charges and Specifications:

1. Said Police Officer William Beattie, on or about April 18, 2015 at approximately 0145 hours, while assigned to the 34th Precinct and on duty, in the vicinity of [REDACTED], New York County, abused his authority as a member of the New York City Police Department in that he frisked Person A, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

2. Said Police Officer William Beattie, on or about April 18, 2015 at approximately 0145 hours, while assigned to the 34th Precinct and on duty, in the vicinity of [REDACTED], New York County, abused his authority as a member of the New York City Police Department in that he searched Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 - STOP AND FRISK

Appearances:

For CCRB-APU: Amanda Gayle, Esq. & Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

Hearing Date:

January 26, 2017

Decision:

Specification 1 (Frisk): Guilty
Specification 2 (Search): Not Guilty

Trial Commissioner:
ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 26, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Neither the complainant, Person A, nor his girlfriend, Person B, appeared to testify, and so recordings of their CCRB interviews were admitted into evidence. 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

After reviewing the evidence presented at the hearing, and assessing the credibility of Respondent's live testimony as well as the prior recorded interviews of the witnesses, I find Respondent guilty of conducting a frisk without sufficient legal authority, but not guilty of conducting an unlawful search.

FINDINGS AND ANALYSIS

At about 0145 hours on April 18, 2015, Respondent and his partner Officer Stapleton, both in uniform, pulled over a vehicle in the vicinity of [REDACTED] in New York County for an alleged traffic infraction. Person A was the driver of the car, and his [REDACTED] Person B, [REDACTED], was the front-seat passenger. It is alleged that Respondent improperly frisked and searched Person A after he was removed from the vehicle.

Despite multiple efforts by CCRB to subpoena them and reach them by phone, neither Person A nor Person B appeared to testify at the trial. Instead, a recording of an interview of Person A at the CCRB office on April 22, 2015, and the accompanying transcript, were admitted

into evidence (CCRB Exs. 1 and 1A). Also admitted was a recording of CCRB's telephone interview of Person B on May 14, 2015, along with the accompanying transcript (CCRB Exs. 2 and 2A). Additionally, CCRB offered three photographs depicting the area in question (CCRB Exs. 3-5), as well as the Stop, Question and Frisk report prepared by Respondent (CCRB Ex. 6).

Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N. Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statements of Person A and Person B, and reviewed the accompanying transcripts.

In his interview, Person A stated that before his car was pulled over, he and Person B had just dropped off his [REDACTED] at her home, and then stopped at the bank and a store. As Person A drove off from the store, he noticed that he was being followed by Respondent's unmarked car. After making a left turn onto [REDACTED], Person A was pulled over by Respondent. (CCRB Ex. 1A at 3-5)

According to Person A, Respondent approached him and asked why he had been double-parked in a high-drug area, and Person A explained that he had just come out of the store. Respondent said that Person A's windows were tinted and that he had a taillight out, and asked for Person A's license and registration. Person A complied, and the officer briefly went back to his own car. When Respondent returned, he ordered Person A to exit the vehicle, and Person A again complied. (CCRB Ex. 1A at 6)

Once Person A was out of the car, Respondent took him to the rear of the vehicle and had him place his hands on the car. Person A claimed that Respondent then searched him.

Specifically, Person A stated:

He's touching like – going – I had on a hooded sweater. So he just – he's going through my hoodie, going under my arms, he went inside my pocket. He went down my leg, he went like around the rim of my sneaker. Just, you know, he's in between my legs.

When asked which pockets Respondent entered, Person A responded, "He entered my front, all my pockets." Person A added that Respondent removed Person A's wallet from his back pocket, and then returned it to him. (CCRB Ex. 1A at 19).

Person A stated that he was allowed to get back in his car, but about five minutes later Respondent ordered Person A and Person B back out of the vehicle, and proceeded to search it. Respondent recovered a small pocket knife from under Person A's car seat. Person A explained that he had purchased the knife for his girlfriend a year earlier for protection, but she didn't want it. Person A claimed that at some point, the knife must have fallen from his pocket under his car seat, where it had been for the past two months. (CCRB Ex. 1A at 24-25, 28-29)

Person A was handcuffed and taken to the precinct because of the knife. Person A complained that while at the scene, he repeatedly attempted to speak with Respondent about the situation, but that Respondent's only response was that they would talk about it back at the station. (CCRB Ex. 1A at 10) At the precinct, he was issued a Desk Appearance Ticket for the knife. The parties stipulated that Person A's criminal court case for criminal possession of a gravity knife was adjourned in contemplation of dismissal.

In her telephone interview, Person B stated that after dropping off Person A's [REDACTED], they stopped at the bank and then at a store. Person A ran in and out of the store,

apparently because they didn't have what he wanted there. They drove off, but were signaled to pull over by the police. (CCRB Ex. 2A at 5-6)

According to Person B, Person A provided his license and registration, and a few minutes later one of the officers searched her boyfriend outside the vehicle. From what Person B could see from inside the car looking out through the back, the officer was "searching like – like feeling over his body and then like his pants pockets and – you know – his legs and everything and – but I don't think they found anything." Person B added that it was "pretty much just like a whole body search. It was like nothing like really too crazy. I guess just inside his pockets and like feeling his chest and everything just to see if he had any weapons or anything on him." (CCRB Ex. 2A at 16)

Person B confirmed that the officers recovered a knife inside the vehicle. She wasn't sure where specifically they found the knife, but believed it was in the back of the car under one of the seats. Person B claimed that she was unaware that the knife was in the car, and speculated that maybe her boyfriend had taken the knife back from her and "it was just laying around in his car." (CCRB Ex. 2A at 13-14) Person B added that she felt embarrassed when she was forced to stand outside the car while the officers searched it, and she repeatedly stressed how rude the officers were toward her boyfriend. (CCRB Ex. 2A at 7, 20, 22)

Respondent testified that at the time of the incident, he was assigned to the midnight Conditions Unit of the 34th Precinct. He first observed Person A's car double-parked in a known drug location on [REDACTED] [REDACTED]. From his unmarked car, Respondent observed Person A exit his vehicle and speak with individuals at the location, several of whom Respondent recognized from prior drug-related arrests. Respondent

acknowledged, though, that he did not see any drugs exchanged, nor did he witness any exchange whatsoever take place before Person A returned to his car. (Tr. 31-34, 48, 75-76)

Based on his observations, Respondent decided to follow Person A's vehicle, and observed Person A make a left turn onto [REDACTED] [REDACTED] without signaling. Respondent used his lights and siren to signal Person A to pull over, and the driver immediately complied. As Respondent was preparing to exit his vehicle, he observed Person A, in the driver's seat, dipping down several inches with his right shoulder, as if towards the floor of the vehicle. This observation made Respondent "somewhat nervous", since he was unable to determine whether the driver had a weapon, or was just placing something on the floor. (Tr. 35-37, 50-51)

Respondent testified that he approached the driver and asked for his license and registration, and that Person A complied. Respondent asked Person A what he had been doing on [REDACTED], and he answered that he had been looking to purchase ice cream for his [REDACTED] girlfriend, who was in the front passenger seat. From what he had seen, Respondent believed that Person A was lying about his activity on [REDACTED]. (Tr. 37-38, 52)

According to Respondent, the combination of Person B's interacting with known drug dealers, lying about what he was doing, and bending down in his vehicle, placed Respondent "somewhat in fear for (his) safety." Respondent asked Person A to step out of the car, which he did. Person A was wearing clothing that covered his waistband area. Respondent acknowledged that he did not see any weapons or suspicious bulges on Person A, or any other suspicious movements, and Person A did not make any threatening remarks. Nevertheless, Respondent "quickly and briefly did a pat down." Specifically, Respondent did a "very light touching of the outer garments", over Person A's chest, sides, waistband, and down his legs to

about the cuffs on top of his sneakers, and nothing was found. Respondent insisted he did not go inside Person A's pockets or in any way search him. (Tr. 38, 42, 55-56, 63-65)

While Person A was standing outside his vehicle, Respondent was able to observe a knife inside the car to the right of the driver's seat, wedged between the seat frame and the console. Respondent retrieved the knife, which he determined was a gravity knife, and placed Person A under arrest. Person A was searched at the scene, and then taken to the precinct where he was issued a Desk Appearance Ticket. (Tr. 39-41, 66)

Specification 1 alleges that Respondent frisked Person A without sufficient legal authority. It is not disputed that Respondent did, in fact, frisk Person A. The issue is whether the frisk was reasonable. Under the circumstances of this case, it was not.

It is well-settled that an officer may conduct a protective frisk of a detainee where the officer "reasonably suspects" that he is in danger of physical injury by virtue of the detainee being armed. See Patrol Guide section 212-11 (2) (effective as of 8/1/13), tracking the language of *People v. DeBour*, 40 NY2d 210 (1976). Respondent argues that his frisk of Person A was reasonable based on three principal factors: Respondent's observation of Person A interacting with known drug dealers, Person A's lying about that interaction, and the manner in which the driver dipped his shoulder down to the right after the car stop. This tribunal disagrees. Even viewing the evidence in the light most favorable to Respondent and accepting the officer's account of what transpired, Person A's behavior did not give rise to a reasonable suspicion that he was armed and dangerous. At no point before the frisk did Respondent observe a weapon or anything that resembled a weapon. Similarly, the officer did not see any suspicious bulges on Person A. Respondent observed Person A dipping his shoulder inside the car, but that motion was also susceptible to an innocent explanation. Otherwise, Person A did not make any

suspicious movements or gestures. There was no indication that Person A was committing a violent crime. Person A did not verbally threaten the officers, and he was compliant with all of Respondent's instructions. Viewed as a whole, Person A's actions did not give the officer a reasonable basis for believing that Person A possessed a weapon.

This tribunal is mindful of the heightened dangers faced by police during traffic stops, particularly at night in a high crime area, and so the act of asking Person A to step out of the car was reasonable as a precautionary measure. See *People v. Robinson*, 74 NY2d 773 (1989). However, it was not reasonable for Respondent to then frisk Person A. Counsel for Respondent suggests that Respondent acted in good faith, but that is not enough to absolve Respondent of guilt. To be sure, Respondent's good faith will be considered on the issue of an appropriate penalty. But an officer cannot avoid accountability merely because he acted in good faith; an officer also has a responsibility to act reasonably under the circumstances, in a manner consistent with the law and the patrol guidelines. This Respondent failed to do, as he conducted a frisk without sufficient legal authority, and I find him guilty of Specification 1.

Specification 2 alleges that at the time of the frisk, Respondent simultaneously searched Person A without sufficient legal authority. In contrast to the first specification, here there is a factual dispute about what occurred. In their hearsay statements, both Person A and Person B contended that Respondent did search Person A. Respondent, though, unequivocally denied conducting such a search, testifying that he only patted down Person A, and did not reach into his pockets. Counsel for Respondent argues that the record did not establish, by a preponderance of the credible evidence, that Respondent actually searched Person A. This tribunal agrees with that assessment.

Although most of what Person A described was more of a pat down than a search, he did claim that Respondent also "went inside" his pockets, and even removed his wallet. Unfortunately, given the hearsay nature of this evidence, there was no opportunity to cross examine Person A on this and other claims he made, which would have been beneficial in assessing his credibility. From his statement, it was clear that Person A was frustrated with Respondent's failure to communicate at the scene, and it would have been useful to have Person A questioned regarding whether that frustration, and the fact that he was handcuffed and brought to the precinct for a "keychain knife", caused him to exaggerate any portion of his statement. Although the knife was recovered after the alleged search, Person A's claim that the knife must have fallen from his pocket and sat on the car floor for two months was somewhat dubious, perhaps designed to distance himself from actually possessing the knife in the car; it would have been helpful in assessing Person A's credibility to have heard him questioned on this point as well.

Moreover, in her telephone statement several weeks after Person A's statement, Person B provided limited corroboration that an actual search occurred. She first recounted how the officer was "feeling over" her boyfriend's body, which is more consistent with a frisk. Though she also made a general reference to how the officer conducted a whole body search, what she actually described was less compelling: "It was like nothing like really too crazy. I guess just inside his pockets and like feeling his chest and everything just to see if he had any weapons or anything on him." Person B made no mention of seeing Person A's wallet being removed. Again, in the absence of live testimony from Person B, counsel for Respondent was deprived of an opportunity to conduct a meaningful cross examination. It would have been useful to the fact-finder to hear Person B questioned more thoroughly about how much of the "search" she actually

was able to see while sitting inside the car, and to confirm that she was not confusing this contact with the search that took place incident to the arrest. What exactly did she mean when she said she "guessed" the officer went inside Person A's pockets? It also would have been helpful to know whether and to what extent Person B had discussed Person A's earlier statement with him, in preparation for the statement she provided several weeks later.

Respondent, meanwhile, appeared professional and forthright as he answered questions about the incident. He candidly admitted he did pat down Person A. Respondent described what he had observed leading up to the frisk, without embellishing his observations just to support his actions. For instance, Respondent candidly admitted that he did not witness any exchange take place on [REDACTED]. This tribunal found Respondent to be a credible witness, and credits his testimony that he did not search Person A. The record has failed to establish, by a preponderance of the credible evidence, that at the time of the frisk Respondent simultaneously searched Person A, and I find him not guilty of Specification 2.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

Respondent has been found guilty of one of the two specifications, for conducting a frisk without sufficient legal authority. CCRB asks that Respondent forfeit ten (10) vacation days as an appropriate penalty, but that recommendation is excessive, particularly because of the not guilty finding on one of the two counts.

As discussed above, this tribunal found Respondent to be forthright in his description of what occurred, without overstating the details just to support his cause. However, despite his good intentions, Respondent did not act reasonably in frisking Person A under the circumstances that existed here. An officer must reasonably suspect that he or others are in danger of physical injury before conducting a frisk, and Respondent's articulated observations did not rise to that level.

In *Disciplinary Case No. 11138/14* (Sept. 22, 2015), a seven-year officer with no formal disciplinary history forfeited two (2) vacation days for an unlawful frisk during a car stop. Considering the totality of facts and issues in the present case, that penalty is appropriate here as well. Accordingly, I recommend that Respondent forfeit two (2) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

JUN 08 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WILLIAM BEATTIE
TAX REGISTRY NO. 938046
DISCIPLINARY CASE NO. 2015-14618

Respondent was appointed to the Department on July 11, 2005. His last three annual performance evaluations were 4.5 "Extremely Competent/Highly Competent" in 2016, 2015, and 2014. He has been awarded three medals for Excellent Police Duty. [REDACTED]

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials