



POLICE DEPARTMENT CITY OF NEW YORK

April 4, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Shaquanna White-James
Tax Registry No. 945847
Transit Bureau District 30
Disciplinary Case No. 2014-12644

Charges and Specifications:

1. Said POLICE OFFICER SHAQUANNA WHITE, on or about June 2, 2014, at approximately 23:54 hours while assigned TBDT30 and on duty in the vicinity of the Transit Bureau District 30 station house, abused her authority as a member of the New York City Police Department, in that she conducted a strip search of TYNNEAL GRANT without sufficient legal authority.

P.G. 208-05, Page 2, Paragraph C - ARRESTS - GENERAL SEARCH
GUIDELINES

Appearances:

For CCRB-APU: Heather Cook, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, New York 10038

Hearing Date:

January 8, 2015

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 8, 2015. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. CCRB called Tynneal Grant as a witness. Respondent testified on her 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 the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. Tynneal Grant, a 33-year old interior designer, was arrested at the Nostrand Avenue A/C subway station by Police Officer Spencer Strauss at approximately 2354 hours on June 2, 2014 for Theft of Services. Subsequent to the arrest, she was transported to Transit District 30 for arrest processing. After checking in with the Desk Officer, Sergeant Richard Araya, Grant was turned over to Respondent. Respondent took custody of Grant and led her into a restroom within the District 30 offices.

Respondent took Grant, who was handcuffed, into the bathroom, un-cuffed her, then directed her to "shake out her bra." At the time of Grant's arrest, she was attired in a cut-off t-shirt, a pair of overalls and sneakers. Grant advised Respondent that she was not wearing a bra, to which Respondent replied, "I need to see." At that point, Grant unfasted the straps of her overalls which caused the bib to fall to her waist, partially exposing her panties. Grant then lifted the bottom of her t-shirt up, exposing her breasts. Respondent turned her back to Grant and directed her to lower her t-shirt. When Grant had done so, Respondent placed her hands

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inside the waistband of Grant's overalls and slid her fingers along the seam. At no point prior to taking Grant into the bathroom was Respondent directed by anyone to perform a strip search. Furthermore, no one advised Respondent that Grant was suspected of hiding contraband or a weapon in her clothing.

The issue in this case is whether Respondent conducted a strip search in violation of Patrol Guide Section 208-05. Tynneal Grant testified that Respondent directed her to perform certain acts which caused her breasts and panties to be exposed to Respondent's view. Grant further testified that Respondent conducted a pat-down of her legs. Respondent testified, consistent with Grant's testimony, to the directions she gave Grant during the search but took the position that any exposure of Grant's breasts and panties was inadvertent and not due to her directions. Furthermore, Respondent took the position that the acts she admittedly performed on the date in question did not constitute a strip search within the meaning of Patrol Guide 208-05. Finally, Respondent denied ever placing her hands on Grant, specifically denying conducting a pat-down of Grant's legs. Having considered the testimony, evidence and arguments put forth by the parties, I find that Respondent did conduct a strip search of Tynneal Grant without sufficient legal authority. What follows is a summary of the evidence presented by the parties which is relevant to the disputed facts.

At the hearing, Grant testified that she was placed under arrest at the Nostrand Avenue station of the "A" and "C" lines and charged with Theft of Services¹ (T. 15, 23). Grant was transported from the subway station to Transit District 30, located at the Hoyt-Schermerhorn Station, for arrest processing (T. 26). Upon arrival at the Transit District office, Grant was presented to Sergeant Araya, who was the Desk Officer that evening. Sergeant Araya asked

¹ Although Grant was permitted to testify to the circumstances of the arrest, the facts leading up to the contested search are not discussed in great detail in this decision, as they were admitted only to provide the background for the subsequent search.

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Grant if she needed water, then informed her that she was going to be searched (T. 26-27). At the time of her arrest, Grant was wearing a yellow cutoff t-shirt and oversized, men's size Large, striped overalls (T. 27, 65). Grant also possessed a backpack, which contained a hoodie (T. 27). In the pockets of her overalls, Respondent had her phone, tissues, and keys (Id.). Grant first saw Respondent when she appeared next to the Sergeant Araya's desk wearing gloves (T. 27-28).

Respondent brought Grant into a bathroom and asked her whether she had anything in her pockets (T. 29). Grant emptied her pockets and gave Respondent her keys, phone and tissues (T. 29, 30). Respondent then told Grant that she had to undo the top strap of her overalls; without responding, Grant unfastened the straps and her coveralls fell to her knees, exposing her panties (T. 30). Grant conceded that Respondent neither prevented her from holding onto the straps of the overalls as she unbuckled them nor ordered her explicitly to let the coveralls fall as far as they could (T. 64). As the coveralls fell, Grant widened her stance so that they would only fall to her knees (T. 66). Respondent then asked Grant whether she was wearing a bra, to which Grant replied that she was not (T. 31). Respondent asked Grant to lift her shirt, to which Grant replied that she did not want to (Id.). Grant testified that Respondent replied, "If you don't, I will" (T. 32). Grant then lifted her t-shirt above her face (Id.). Grant conceded that Respondent did not direct her to take off her shirt, pull the shirt over her head, or to remove her shirt (T. 64-65). Respondent then directed Grant to buckle her pants back up, then patted down her legs (T. 33). Finally, Respondent took Grant's shoes before placing her in a cell (Id.). Grant was released several hours later without charges (T. 33-34). Grant lodged a complaint with CCRB the next day (T. 35).

At the hearing, Respondent testified that at approximately 2350 hours on June 2, 2014, she was on duty at Transit District 30, when she was called to the front desk to assist in the arrest

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processing of a prisoner, Tynneal Grant (T. 73). According to Respondent, Grant was handcuffed, crying, and shaking (Id.). Respondent further described Grant's head as "tweaking," which she explained was moving as if the suspect is under the influence of a controlled substance (T. 73-74). According to Respondent, she was advised that Grant had been arrested for Theft of Service and was further advised by Sergeant Araya that Grant "needed to be searched" (T. 74). Respondent recalled Grant wearing a short top and overalls (T. 75). Respondent was wearing her uniform at the time she met Grant and donned latex gloves prior to taking physical custody of her (T. 81).

Respondent took Grant to a bathroom, which was unoccupied, and removed her handcuffs (T. 81-82). Respondent told Grant that she need to search her; Grant's reply was that she did not wish to be searched (T. 82). Respondent advised Grant that she had to search her "because [she] was under arrest" (Id.). Grant replied that she still did not wish to be searched; Respondent again advised Grant that she had to search her but once the search was complete, Grant would be returned to the front desk (T. 83).

Respondent testified that she then directed Grant to "lift up her shirt and shake out her bra . . . so that way anything that's held inside the bra can fall out and you'll be able to see and recover whatever it is that's in the bra . . . but you do not touch them" (T. 83-84). Respondent stated that her procedure for searching female suspects was to "give instructions or (sic) what they should do to themselves" (T. 84). Respondent testified further that she did not touch Grant because she "never wanted to be accused of touching anybody's personal body parts" (Id.). When Grant advised Respondent that she was not wearing a bra, Respondent replied "I need to see" (Id.). According to Respondent, Grant then lifted her t-shirt over her head and started screaming (T. 84-85). Respondent then told Grant to put her shirt down and turned her back to

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Grant for a few seconds to afford her some privacy and avoid looking at her breasts (T. 85). Respondent denied ever telling Grant to drop her pants or her overalls to the ground (Id.). Respondent testified that she had no fear for her safety at that point because she believed that Grant had been searched in the field and was unlikely to have anything in her possession which could cause her harm (Id.). Grant yelled "don't look at them" before she turned her back, and had pulled her shirt back down by the time Respondent turned around to face her again (T. 86). Grant pulled her overalls back up immediately (Id.). Respondent denied ever having contact with Grant's overalls or t-shirt and further denied patting her down or searching her shoes (Id.). Once Grant had rearranged her clothing, Respondent placed the handcuffs back on her and escorted her to the front desk area (T. 87). Respondent presented Grant to the Desk Sergeant and was instructed to place her in a holding cell (T. 87-88).

Respondent conceded that at the time she conducted the above-described search, she had no reasonable belief that Grant was secreting contraband or a weapon in her clothing (T. 89-90). Respondent conceded further that no one, specifically Sergeant Araya, instructed her to perform a strip search (T. 89). Respondent testified that she placed her hand inside Grant's pocket to remove her wallet as they stood in front of the Desk Officer, Sergeant Araya, but did not recall Grant handing her a cellphone, keys, and tissues (T. 96-97). Respondent asserted that Grant initially pushed her overalls to the side, in an attempt to show Respondent that she had no bra on (T. 100-101). Respondent conceded that in order for Grant to lift her t-shirt up to show Respondent that she was not wearing a bra, the straps and bib of the overalls would have had to been lowered below Grant's breasts (T. 102). Respondent further asserted that while she directed Grant to lower the straps and the bib, she did not direct Grant to drop her overalls to the floor (T. 102). Respondent contradicted her testimony on direct examination that Grant pulled

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up her overalls right away when she admitted to placing her hands inside the waistband of Grant's overalls after they had fallen and sliding her fingers along the seam in a search for contraband (T. 104). Respondent further conceded that as she searched the waistband of the overalls, she could see the rim of Grant's panties (T. 109).

Respondent asserted that her direction to Grant to shake out her bra did not call for the exposure of undergarments (T. 94). Respondent asserted further that it was her understanding that a strip search called for the exposure of a suspect's "buttocks, genitalia, stuff like that" (T. 117). Additionally, that when she entered the bathroom with Grant, she believed that she had the legal authority to place her hands on Grant's person if she deemed it necessary (T. 119). Finally, Respondent conceded that the decision not to touch Grant was her individual choice (T. 119-120).

A strip search is defined in the Patrol Guide as "any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas" (P.G. 208-05[1][C][1]). Pursuant to the Patrol Guide, strip searches may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor or the borough court section supervisor (Id.). Strip searches may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods (Id.; see P.G. 208-05[1][A], [1][B]).

At the outset, the record is clear that Respondent neither received, nor sought authorization from her immediate supervisor, Sergeant Araya, to perform the search she conducted on Grant. The record is also clear that Respondent, by her own admission, was

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neither advised by either Police Officer Straus or Sergeant Araya, nor suspected based on her own investigation, that Grant was hiding weapons or contraband. For those reasons, the search Respondent conducted was unauthorized, unwarranted, and a violation of her obligations under the Patrol Guide. Respondent's subjective and erroneous interpretation of what constitutes a strip search does not serve as a defense.

Grant testified succinctly, logically, and consistently. The tribunal credits her testimony as bearing the indicia of truth. Her accurate testimony, as well as Respondent's testimony regarding the directions she gave her, establish by a preponderance of the evidence that Respondent directed Grant to perform certain actions which were tantamount to a strip search, in violation of Patrol Guide 208-05.

There can be no doubt that at the time of the search Grant was in police custody and perceived herself as not being free to go. It is reasonable to believe that Grant felt compelled to follow the directions of Respondent while she was in an arrest status. By Respondent's own admission, her direction to Grant was "lift up her shirt and shake out her bra," the language she used called for a *de facto* strip search. When Grant informed Respondent that she was not wearing a bra, Respondent replied "I need to see." Since, according to the evidence in the record, Respondent took no steps at that time to place her hands on Grant, the logical inference to be drawn was that Respondent was directing Grant to expose her breasts to her. Even if the tribunal were to credit Respondent's assertion that Grant first pulled the straps of her overalls and the bib to the side to show Respondent that she was not wearing a bra, any doubt about the adequacy of Grant's proffer would have been dispelled when Respondent then directed her to unfasten the straps of the overalls and lower the bib. There is no reasonable interpretation of that imperative under those circumstances which would not call for Grant's private area (i.e. her

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breasts) to be exposed. Thus, Grant's lifting of her t-shirt to expose her breasts was a foreseeable and reasonable response to Respondent's directions.

In contrast, Respondent's testimony was illogical and self-serving. It makes no sense on the one hand that Respondent conceded that she had the legal authority to conduct a search of Grant's person but, on the other, persisted in the assertion that she did not conduct a pat-down of Grant's legs in the face of Grant's unequivocal testimony that Respondent had done just that. Furthermore, it would defy logic to credit Respondent's assertion that Grant willingly exposed her breasts of her own volition. It is clear that the only reason Grant would have exposed her own breasts to Respondent's visual inspection is that Respondent refused to place her hands on Grant to ascertain whether she was in possession of a weapon or contraband, as was her duty to determine.

Respondent further undermined her credibility when she denied having any contact with Grant's overalls on direct examination but then admitted on cross-examination that she used her thumbs to search the interior waistband of the same overalls. I further find that Respondent demonstrated a willingness to substitute her own judgment of how a search of a female prisoner should be conducted for the direction in Patrol Guide 208-05. Finally, as an interested witness in this proceeding, Respondent has a strong incentive to testify in a manner which absolves her of liability for her conduct. Accordingly, I find that Respondent's testimony was unreliable.

While Respondent asserted that she never sought to expose Grant's panties to her view, common sense dictates that a pair of loose-fitting pants may well fall past the waist of a suspect if their means of support is removed. The tribunal takes judicial notice that overalls are generally constructed without a belt and are supported by shoulder straps attached to a bib. Moreover, according to Grant's testimony, she was wearing men's size Large overalls; it should

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not have been surprising to Respondent that after unfastening the shoulder straps, Grant's overalls fell to her knees.

Respondent's trial posture that neither her direction to Grant to pull up her t-shirt and shake out her bra nor her supposedly unintentional exposure of Grant's panties violated the Patrol Guide provisions on strip searches is unpersuasive. Respondent is accountable for adherence to Patrol Guide 208-05. Accordingly, I find that despite Respondent's assertion that she had no intention of performing a strip search, the search she performed rapidly became one.

Accordingly, I find that Respondent is guilty of the misconduct set forth in the specification.

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 January 7, 2008. CCRB has requested a penalty of forfeiture of 30 vacation days. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Based upon the evidence in the record, I find CCRB's requested penalty of 30 days excessive. In cases with similar facts, Respondents have received penalties of five vacation days (*see Disciplinary Case No. 85906/09, signed May 12, 2010* [Fourteen-year detective with no prior disciplinary record pleaded Nolo Contendere and forfeited five vacation days and agreed to receive instructions/retraining on proper strip search procedures for abuse of authority and failure to document strip search. The Respondent abused her authority when she told a prisoner to pull her bra away from her body and shake it and remove her pants and shoes. The Respondent stated that she was unaware that a strip search also can include having undergarments exposed to view]; *Disciplinary Case No. 83951/08, signed May 12, 2010* [Five-year police officer with no

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prior disciplinary record negotiated a penalty of five vacation days for unlawful strip search of an individual. The Respondent searched an individual who had been arrested and caused the undergarments to be exposed.]; *Disciplinary Case No. 84323/08, signed March 27, 2012* [Twenty-year police officer with no prior disciplinary record forfeits five vacation days for conducting a strip search without proper reason or authority. Respondent placed her hand underneath the prisoner's shirt and held on to her bra band, thereby exposing the prisoner's undergarments]; *Disciplinary Case No. 2014-11476, signed September 23, 2015* [Seventeen-year police officer with no prior disciplinary record forfeits five vacation days for conducting a strip search without sufficient legal authority. Respondent instructed a prisoner to shake out her bra and the waistband of her leggings. This made it possible for Respondent to see the bottom half of the prisoner's sports bra and the top of her underwear. The Department has made a judgment that strip searches include any search in which undergarments are exposed.]).

In this case, there are several aggravating factors present. First, as an experienced police officer who, by her own testimony, has been conducting searches of female prisoners for six and one-half years in the same manner as the search in this case, Respondent should have taken it upon herself to become familiar with the provisions of the Patrol Guide which pertained to the performance of her assigned duties. At the very least, she should have complied with the required authorizations. Second, Respondent's attempt to recast the plain language of Patrol Guide 208-05 in her testimony was disingenuous. Third, the callous manner in which Respondent ordered Grant to expose her breasts to avoid conducting a frisk (or a pat-down), as it was her duty to do, evince a disregard for the mission of this Department to enforce the law while treating all citizens with courtesy, professionalism, and respect. Finally, weighing her

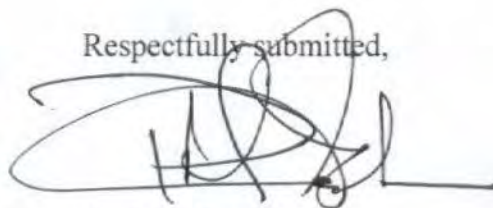
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current misconduct through the lens of her previous disciplinary record strongly suggests that her misconduct warrants a significant sanction.

The facts of this case evince a troubling pattern of Respondent exercising bad judgment. Respondent completed a one-year period of dismissal probation in January 2014 as a penalty for another serious offense committed in 2012. It is troubling that she would, after receiving a significant penalty, fail to carry out her responsibilities in such blatant disregard for the Patrol Guide's explicit requirements. Respondent's admittedly continuous violation of the regulations of this Department invites a re-evaluation of her potential for continued service as a police officer.

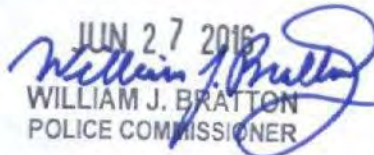
Accordingly, I recommend that Respondent forfeit ten vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUN 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SHAQUANN WHITE-JAMES
TAX REGISTRY NO. 945847
DISCIPLINARY CASE NO. 2014-12644

On her last three annual performance evaluations, Respondent twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 4.0 "Highly Competent." [REDACTED]

Respondent has been the subject of one prior adjudication. In 2012, she pled guilty to verbally threatening and displaying her firearm to a nine year-old classmate of her daughter's in a schoolyard. She was placed on modified duty status for one day, forfeited 30 vacation days, and was placed on dismissal probation from December 4, 2012 to January 13, 2014, as a penalty.

Paul M. Gamble
Assistant Deputy Commissioner Trials