



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

January 13, 2015

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Matthew Lewis**
Tax Registry No. 941054
113 Precinct
Disciplinary Case No. 2013-10189

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on March 19, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2013-10189

1. Said Police Officer Matthew Lewis, on or about March 4, 2012, at approximately 2035 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched a vehicle driven by Person A, without sufficient legal authority. *(As amended)*

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

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

2. Said Police Officer Matthew Lewis, on or about March 4, 2012, at approximately 2035 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he frisked Person A without sufficient legal authority. *(As amended)*

P.G. 212-11, Page 1, Paragraph 3

STOP AND FRISK

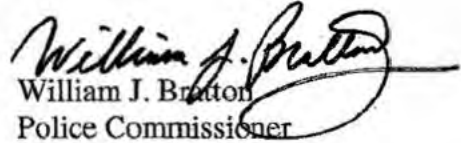
3. Said Police Officer Matthew Lewis, on or about March 4, 2012, at approximately 2035 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED], Queens County, abused his authority as a member of the New York City Police Department in that he searched Person A without sufficient legal authority. *(As amended)*

P.G. 212-11, Page 1, Paragraph 3

STOP AND FRISK

In a Memorandum dated September 23, 2014, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification Nos. 1 and 3 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2013-10189. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of Police Officer Lewis' overall rating of 4.5 "Extremely Competent/Highly Competent" in his last three annual performance evaluations, 36 medals, along with commendable comments about him by his Commanding Officer, I deem that a lesser penalty is warranted. Therefore, Police Officer Lewis shall forfeit four (4) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

September 23, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Matthew Lewis
Tax Registry No. 941054
113 Precinct
Disciplinary Case No. 2013-10189

The above-named member of the Department appeared before me on March 19, 2014, charged with the following:

1. Said Police Officer Matthew Lewis, on or about March 4, 2012, at approximately 2035 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED] Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched a vehicle driven by Person A, without sufficient legal authority. (*As amended*)

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

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

3. Said Police Officer Matthew Lewis, on or about March 4, 2012, at approximately 2035 hours, while assigned to 113th Precinct and on duty, in the vicinity of [REDACTED] Queens County, abused his authority as a member of the New York City Police Department in that he searched Person A without sufficient legal authority. (*As amended*)

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

The Civilian Complaint Review Board was represented by Remi Simoes, Esq., and Respondent was represented by Michael Martinez, Esq., Worth Longworth & London, LLP.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1 and 3. He is found Not Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Civilian Complaint Review Board's Case

The Civilian Complaint Review Board (CCRB) called Robert Rodriguez as its sole witness and entered into evidence the out-of-court statement of complainant Person A.

Robert Rodriguez

Rodriguez has been an investigative team manager for CCRB since 2008. Greg Joss, who was the investigator assigned to Person A's complaint against Respondent, is no longer employed by the CCRB. As a manager, Rodriguez interacted with Joss on a daily basis for over two years.

Rodriguez testified that Person A made his initial complaint online on March 6, 2012. Person A alleged in his complaint that his vehicle was improperly stopped and searched and that he himself was frisked and searched. Person A also made discourtesy allegations and alleged that the officers refused to provide their names and shield numbers to him. Joss interviewed Person A on March 21, 2012. Rodriguez did not personally participate in the interview.

On cross-examination, Rodriguez testified that he is not aware of a way to get former CCRB employees to testify, nor is he aware of any efforts made to get Joss to appear at trial. During the course of Joss' investigation, Person A provided multiple statements. Person A initially claimed that an officer asked him if he was a lawyer, but by the third time he recounted the incident the question became whether he was a "fucking lawyer." According to Rodriguez, the credibility of a complainant is not something CCRB investigators "weigh into [their] analytical process." In his original complaint, which was sent to CCRB via email, Person A stated that he told the officer during the incident that they could "only search what is in plain sight."

On redirect examination, Rodriguez testified that to his knowledge Person A was not a lawyer. He did not know if Person A filed a lawsuit based on the incident.

CCRB Interview of Person A¹

CCRB Exhibits 1 and 2 are the compact disc recording and transcript of the interview conducted by Joss on March 21, 2012. In the interview, Person A stated

¹ According to the CCRB prosecutor, multiple attempts were made to contact Person A. Letters notifying him of trial were sent to his address on file and also to the address on file for his girlfriend. Both letters were returned to sender. Furthermore, a process server made two unsuccessful attempts to subpoena him.

that at approximately 8:35 p.m. on March 4, 2012 he was driving his girlfriend's vehicle and Respondent pulled him over. It was dark out, and there were no streetlights in the area. Respondent approached the driver's side, and two other officers approached on the other side. During the approach, Person A had his hands on the steering wheel. All of the vehicle windows were tinted. Person A rolled down his window, and he explained to Joss, "Whenever I am pulled over, I roll down my window because I think maybe I should open my window to talk and hand whatever information." Respondent asked to see his license. Person A went through his wallet, but he could not find his license. Respondent then asked Person A to roll down the other windows. Person A complied but told Respondent, "I don't think it's right. It's illegal for you to ask me to roll my windows down." At that point, Respondent asked him to step out of the vehicle and go to the back. Person A was compliant, and Respondent started "physically checking the car, looking under the pedals. He also opened the back door, leaned in and started looking." Person A told Respondent that he did nothing wrong and that he believed it was illegal for Respondent to be searching the vehicle without permission. Respondent asked Person A if he was a "fucking lawyer," and Person A replied that he was a student.

While Person A was standing outside the vehicle, Respondent and one of his partners asked him if he had any weapons on him. Person A said no, but the officers began putting their hands into his pockets and emptying them out. Respondent pulled out Person A's wallet and started going through it, coming across a PBA card. Person A also had a cell phone and flash drives in his pockets. The officers placed these items on the trunk of the car. Person A did not have anything clipped to his

waistband. He offered to give Respondent his license number, and he asked why Respondent was searching his vehicle and going through his pockets. Respondent replied, "Because I don't want to be shot in the face by someone that looks like you." Person A stated that he knew his rights, and Respondent replied, "Well, you know you have the right to shut the fuck up." Person A told the officers that he wanted their names and shield numbers. The officers allowed Person A to return to his vehicle.

Upon request, Person A told Respondent his name and address. Person A asked him a second time for his shield number, but Respondent did not provide that information. Respondent ultimately issued Person A a summons. When Person A asked again for names and shield numbers, Respondent told him that that information was included on the summons.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, an eight-year member of the Department, is currently assigned to the 113 Precinct, where he is a member of the strategic enforcement team. The precinct is a high-crime area, and Respondent's team concentrates on gangs and heavy narcotics. When asked how he got on the team, he replied, "Getting in is pretty much making arrests, being active. Learning and studying certain crime patterns. Getting the right training."

On March 4, 2012, he was working with a Detective Raeo and Police Officer Dameron in an unmarked car. All three of them were in uniform. At approximately 8:30 p.m., they pulled over a vehicle in the vicinity of [REDACTED] [REDACTED] for having all four of its windows heavily tinted. As he approached the vehicle, Respondent could see the motorist (Person A) moving around a lot going from side to side. Respondent thought that this was unusual. The lights of the Department car were turned on, but lighting conditions in the area were generally dark. Respondent could see shadows moving around inside the vehicle, but he could not make out any of Person A's characteristics.

From a distance of about two arms' length, Respondent asked Person A to roll down his windows. Person A did not comply. When the back window came down a little bit, Respondent shined his flashlight in the back of the vehicle. Person A told Respondent that he was not supposed to do that. For safety reasons Respondent remained near the driver's side back window while Raeo stood on the passenger's side. The back window was not opened wide enough for Respondent to see anything, and he could not even tell how many people were inside the vehicle. Respondent was concerned for his own safety and the safety of his partners. Respondent explained, "By him not putting the window down there's a possibility that he's trying to conceal something inside the vehicle. Plus the fact that when approaching the vehicle he was moving around a lot and lunging around back and forth. There's a possibility that he could have dumped the weapon under the seat. Gives him a lot of time to think and kind of come up with a plan."

When Respondent repeated his order to roll down his window, Person A lowered the window to chin level. Respondent could not see Person A's hands, and he believed that Person A might be concealing a weapon. He asked to see Person A's license, and Person A replied that he did not have his license with him. For his safety, Respondent instructed Person A to step out of the vehicle. Person A responded, "You can't search my car. You have no reason to ask me to step out." Person A seemed nervous, and his hands were trembling. After asking him several times to step out of the vehicle, Respondent opened the car door and Person A exited. Neither Respondent nor Raeo had his firearm drawn.

Respondent discovered a hard object in Person A's pocket, and he patted down Person A's waist area for safety reasons. He explained that the waistband was an area where people are known to carry knives and guns. The hard object in Person A's pocket turned out to be a cell phone. Respondent did not put his hand inside each of Person A's pockets. Respondent guided Person A toward the rear of the vehicle so that Raeo and Dameron could keep him under observation while he (Respondent) gave a quick look under the driver's seat. Respondent explained, "I just kind of popped my head in with a flashlight to make sure, because I said I saw him moving around and lunging back and forth. Just to make sure that he didn't place anything under the seat." Respondent further explained that he used his flashlight to look "under the seats, on the floor and between like where the seat and shifter would be, where you could wedge something. And that was it." He did not look inside the glove compartment or console. He conducted this limited search for his own safety and the safety of his partners. The search lasted no more than a minute.

Person A never produced a license but provided Respondent with a license number. Person A also showed Respondent a PBA card. Respondent issued him a summons for unlicensed operator. Respondent could have issued a second summons for the tint on the windows, but he decided not to. Person A was not happy about receiving a summons, but he went on his way. The entire stop lasted no more than five minutes. There was no force used against Person A. At no point during the stop did Respondent ask Person A if he was a lawyer. Person A was not handcuffed.

On cross-examination, Respondent testified that although he did not have a tint meter, based on his training and experience he believed that the tints on Person A's vehicle were illegal. Respondent had previously recovered weapons from vehicles with tinted windows. When Respondent initiated the car stop, Person A pulled over within a reasonable period of time. As he approached the vehicle, Respondent was able to see the outline of Person A's head through the window. He could see Person A's shoulders shifting back and forth, but he could not see what Person A was doing with his hands. He agreed that the motion he observed could have been consistent with someone looking for a license. But it could have also been consistent with someone placing an object in his waistband.

Person A at first lowered his window to the level between his chin and shoulder. It was only after being instructed numerous times that he lowered the window all the way. At that point, he had his hands in his lap, and Respondent saw neither a weapon nor a bulge. Person A was wearing a bulky jacket and, when he exited the vehicle, Respondent still saw no bulge or anything resembling a weapon on his person. Respondent frisked Person A anyway, and he searched his pocket once he felt a hard,

rectangular-shaped object inside. According to Respondent, the object felt like a weapon. When Respondent put his hand inside Person A's pocket and removed the object, he saw that it was just a cell phone.

While Person A was standing behind the car, he (Respondent) opened the vehicle doors and used his flashlight to search under all of the seats. Respondent prepared a Stop, Question, and Frisk Report (UF-250) for the incident. According to the report, the stop lasted 15 minutes.

On redirect examination, Respondent testified that he indicated on the UF-250 that Person A had been uncooperative and made a statement about Respondent stealing his license.

Upon questioning by the Court, Respondent confirmed that during car stops at night motorists normally roll down their windows when an officer approaches. At no point did Person A say that he was trying to locate his license. Person A lowered the driver's seat window all the way only after being asked three times. Respondent informed Person A that he was being stopped because of the window tints. Respondent described Person A as being nervous, fidgety, and uncooperative.

FINDINGS AND ANALYSIS

Respondent stands charged with frisking and searching Person A and searching Person A's car, all without sufficient legal authority. Person A's out-of-court statement was entered into evidence through CCRB investigative team manager, Rodriguez, who did not even participate in the interview. Person A's failure to appear made it impossible to observe his testimonial demeanor. His absence also made it

impossible to assess his credibility after his version of this event had been tested by cross-examination. Fortunately, however, Respondent's actions in this case are not in dispute. Respondent admitted in his testimony to frisking Person A and to searching both Person A and the car. All that the Court needs to decide, therefore, is whether Respondent successfully articulated legal justification for his actions.

Respondent and two other officers stopped Person A's car for excessively tinted windows. It was a high-crime area after dark, and there were not any streetlights. Respondent testified that he saw movement inside the car while approaching. He described this movement as "lunging around back and forth" and Person A's "shoulders were shifting back and forth." According to Respondent, Person A was not compliant with instructions to roll down the car windows by first rolling down a back window just partially and later rolling down his own window to chin-level. Respondent could not see Person A's hands and believed he might be concealing a weapon. Person A admitted that he became argumentative by telling Respondent that the request to roll down the windows was illegal. He lowered his window all the way only after being ordered three times. Respondent described Person A as nervous, fidgety, and uncooperative. Respondent shined his flashlight into the car, believing that Person A could have hid a weapon under the seat. When Respondent asked to see Person A's license, Person A replied that he did not have his license with him. For his safety, Respondent instructed Person A to step out of the car. Person A stepped out of the car only after Respondent repeated the order several times.

Person A was wearing a bulky jacket, and Respondent conducted a frisk even though he did not see a bulge or anything resembling a weapon on Person A's

person. He explained that he did this for safety reasons. He felt a hard, rectangular-shaped object in Person A's pocket. He believed the object felt like a weapon, and he removed it from the pocket. The object turned out to be a cell phone.

Respondent proceeded to search the car, using his flashlight to look under the seats, on the floor, and the area between the front seats where a weapon could have been wedged. He explained that he conducted this search for his own safety and the safety of his partners. He did not go into the console or glove compartment.

It is well-established that car stops are inherently risky for police officers. The Supreme Court once noted that a significant percentage of murders of police officers occurs when the officers are making traffic stops. *United States v. Robinson*, 414 U.S. 218, 234 (1973). Any search and seizure case involving a vehicle stop requires the balancing of two important considerations: (1) the motorist's privacy interest, and (2) the inordinate risk that police officers face during a stop. In balancing both of these considerations, the Court of Appeals has long recognized that a police officer acting on reasonable suspicion that criminal activity is afoot and on an articulable basis to fear for his safety may intrude upon the personal effects of the suspect only to the extent that is actually necessary to protect himself from harm. *See People v. Torres*, 74 NY2d 224, 226 (1989); *People v. Newman*, 96 AD3d 34, 41 (2012).

Respondent articulated several factors for the actions he took after stopping Person A's vehicle. To specify, these factors were the time and location of the car stop (a high-crime area after dark with no streetlights), the movements Respondent observed while approaching the car (which, among other things, could have been Person A lunging for or concealing a weapon), and Person A's demeanor (his failure to

immediately comply with Respondent's orders to roll down the windows and step out of the car; being argumentative by telling Respondent that the request to roll down the windows was illegal; being generally nervous, fidgety, and uncooperative). A police officer needs an independent, reasonable belief of immediate danger to himself in order to frisk a subject. *See People v. Mack*, 26 N.Y.2d 311, 317 (1970); *Patrol Guide* § 212-11 (2); Legal Bureau Bulletin, Vol. 1, No. 3, p. 3 (Mar. 31, 1971). None of the factors articulated by Respondent, when taken by itself, would have raised suspicion to the level needed to conduct a lawful frisk. When taking the factors together, however, the Court understands how Respondent would have reasonably believed that Person A posed an immediate threat to his safety. For these reasons, the Court will not second-guess from the safety of the bench, Respondent's decision to frisk Person A.

It is Respondent's further intrusive act of searching Person A and the car that the Court has trouble with. Respondent felt in Person A's pocket a hard, rectangular-shaped object. Where a limited protective frisk of a subject reveals a bulge, that bulge must look or feel like it may be a weapon before the officer is entitled to conduct a further and more intrusive search. *People v. Clark*, 213 A.D.2d 946 (1995); *Patrol Guide* § 212-11 (3). It seems to the Court that in today's society it would have been reasonable for Respondent to assume from his pat down of the pocket that the hard, rectangular-shaped object inside was a cell phone, not a weapon. He, therefore, had no legal basis for going into the pocket and extracting the phone.

About the search of the car, Respondent explained that he believed Person A might have concealed a weapon inside the vehicle. As discussed above, he used his flashlight to look under the seats, on the floor, and the area between the front seats where

a weapon could have been wedged. Although he did not go into the console or glove compartment, his search clearly went beyond the areas in plain view. Respondent's explanation that he conducted this search for his own safety and the safety of his partners is without merit since Person A had already been removed from the vehicle and would have, therefore, been unable to access any weapon left inside the car.

The Court realizes that Person A's removal from the car did not in and of itself make the vehicle search unlawful. The First Department has held that "if information during a car stop reveals that (1) there is a substantial likelihood of a weapon being present in the vehicle which (2) poses an actual and specific danger to the officer's safety, the officer would be justified in engaging in a limited intrusion into the suspect's vehicle notwithstanding the suspect's inability to gain immediate access to that weapon."

Although movements within the car may suggest that the defendant was reaching for something that might be a weapon, an officer must also articulate some other suggestive factor that the defendant may possess a weapon to justify searching the area of the car where the defendant's movements took place once the defendant is removed from the car. *Newman*, 96 AD3d at 42.

In *Newman*, as the officers approached the car, they saw the occupants "moving a lot," "ben[ding] down putting something down and picking something up," "ducking down," and "looking down." Despite the fact that the officers observed everyone in the car moving around, one of the passengers pretended to be asleep during police questioning. When asked for paperwork, the "sleeping" passenger opened the glove compartment but closed it right away without looking inside. Two to three seconds later, the same passenger reached under the front seats as if he was looking for something. The

First Department held that based on the totality of the circumstances, the police were justified in conducting a limited search of the area where they saw the passenger reaching even after the occupants of the car had been removed.

The Court finds that the factors Respondent articulated to justify his actions were not as threatening or suspicious as the factors articulated by the officers in *Newman*.

Respondent even agreed that the movement he observed in the car could have been consistent with someone looking for a license. While the factors in the current case may have justified the frisk of Person A, they fail the balancing test when weighed against the heightened level of intrusiveness involved in the search of Person A's pockets and car.

Based on the foregoing, Respondent is found Guilty of Specification Nos. 1 and 3 and Not Guilty of Specification No. 2.

PENALTY

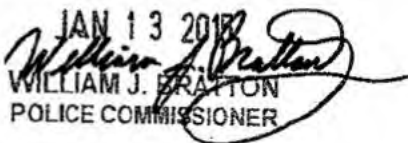
In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 31, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB recommended a penalty of ten vacation days should Respondent be found Guilty of all charges. Respondent has been found Guilty of two of the three specifications with which he has been charged: searching Person A and his car without sufficient legal authority. In *Case No. 2013-9648* (Jun. 17, 2014), a six-year

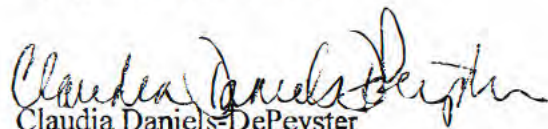
police officer with no prior disciplinary record forfeited eight vacation days for conducting an unjustified frisk and search of complainant. In *Case No. 81682/06* (Nov. 19, 2007), a ten-year sergeant with no prior disciplinary record forfeited two vacation days for an unjustified car search. In *Case Nos. 83890/08 & 83891/08* (Jun. 9, 2011), a twelve-year police officer and six-year police officer with no prior disciplinary record each forfeited five vacation days for an overly intrusive car search. In *Case No. 83805/08* (Jun. 2, 2009), a nine-year member police officer with two prior adjudications forfeited two vacation days for an unjustified car search. In *Case No. 2010-3263 & 2011-6079* (May 16, 2013), an eight-year detective with no prior disciplinary record forfeited ten vacation days for two occasions of improperly searching a car and frisking the driver.

Upon a review of these similar cases, it is recommended that Respondent forfeit a penalty of eight vacation days.

APPROVED

JAN 13 2013

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

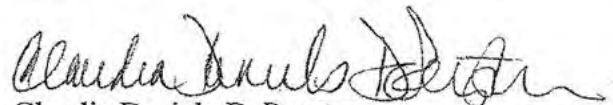
From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MATTHEW LEWIS
TAX REGISTRY NO. 941054
DISCIPLINARY CASE NO. 2013-10189

Respondent received an overall rating of 4.5 “Extremely Competent/Highly Competent” on his last three annual performance evaluations. He has been awarded 36 medals: 27 for Excellent Police Duty and nine for Meritorious Police Duty. [REDACTED]

Respondent has been the subject of one prior adjudication. In 2009, he forfeited 30 vacation days, 30 pre-trial suspension days, and was placed on one year dismissal probation for being unfit for duty, driving while intoxicated, and refusing to submit to a breathalyzer test. In addition, he entered an enclosed yard, urinated on the mailbox, and removed one of the house numbers that was attached to the front wall of the residence.

Since March 2014, Respondent has been on Level I Force Monitoring for receiving three or more CCRB complaints within a year.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials