



POLICE DEPARTMENT

July 17, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Yahkeem Allah  
Tax Registry No. 948604  
Police Service Area 7  
Disciplinary Case No. 2013-9826  
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The above-named member of the Department appeared before the Court on February 10, 2014, and March 10, 2014, charged with the following:

1. Said Police Officer Yahkeem Allah, on or about June 1, 2012 at approximately 2045 hours, while assigned to the 23<sup>rd</sup> 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 stopped Brian Chancy, without sufficient legal authority. *(As amended)*

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

2. Said Police Officer Yahkeem Allah, on or about June 1, 2012 at approximately 2045 hours, while assigned to the 23<sup>rd</sup> 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 Brian Chancy, without sufficient legal authority. *(As amended)*

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

The Civilian Complaint Review Board (CCRB) was represented by Nicole S. Junior, Esq. Respondent was represented by John Tynan, Esq., Worth, Longworth & London LLP.

Respondent pleaded 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 Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

The CCRB called Brian Chancy as a witness.

Brian Chancy

Chancy was employed as the general manager of a restaurant. At the time of the incident, Chancy resided in [REDACTED]  
[REDACTED] New York County. [REDACTED]  
[REDACTED]  
[REDACTED]

Chancy stated that on June 1, 2012, at about 2045 hours, he was on his way out of his building to go out for dinner. He was with his fiancée, his cousin, and her friend, Person A. The four of them took the elevator to the lobby.

Earlier that night, Chancy's fiancée told him that his mailbox was broken and he should look at it. Chancy testified that the mailboxes were directly in the front of the entrance to the building. The elevators and an "exit door" were on the right hand side. He testified that the lobby was "pretty well" lit (see CCRB Exhibit (CCRBX) 1, photograph of corridor; CCRBX 2, photograph of mailboxes).

After exiting the elevator, Chancy's fiancée and cousin walked out of the front door while Chancy and Person A went to the mailboxes. Chancy observed two uniformed police officers, Respondent and Police Officer Janet Caraballo, standing in the lobby.

Chancy went to his mailbox, which was on the bottom row, third from the left. He noticed that one of the clasps was loose. He removed the washer and nut, as well as the cylinder, and placed these pieces inside his pocket. Chancy previously worked in the construction industry and had installed mailboxes before. He intended to fix the mailbox in the morning. Person A stood two feet behind Chancy while Chancy worked on the mailbox.

Chancy testified that Respondent was standing six to eight feet away during this time. When Chancy exited the building and Person A followed, Respondent and Caraballo remained in the lobby.

Chancy started to walk toward Second Avenue to meet his fiancée and cousin (see CCRBX 3 & 4, photographs of development walkways). The exit door was magnetized. When the exit button was depressed to open the door, it made a beeping sound. As Chancy walked toward Second Avenue, 15 or 20 feet away from the door, he heard the beep and noticed that Respondent and Caraballo also left the building.

Chancy continued to walk. He heard someone yell "hey, yo." He turned back, but continued to walk. Shortly after, he heard "hey, yo," again. When he turned around, he saw a police officer flashing a light at him. Chancy turned around and Respondent approached him. Respondent asked him what he had in his hand. Chancy told Respondent that he did not have anything in his hand. Respondent asked again and alleged that he observed Chancy "do a transaction." Respondent told Chancy to turn around and place his hands on the gate.

Chancy testified that Respondent patted him down, including his arms, chest, waistband, legs, and ankles. Respondent also reached inside Chancy's left pants pocket and removed the pieces of the mailbox lock from his pocket.

Chancy testified that he did not actually file the CCRB complaint in this matter. He did not know that the CCRB even existed.

On cross examination, Chancy agreed that the pieces of mailbox he took were smaller than an inch in length and width. It took about a minute to unscrew the mailbox. The officers were standing eight feet away from him. They did not ask him what he was doing and did not offer any assistance. He did not speak to them.

Chancy claimed that he walked for about three minutes before he was stopped by Respondent. Chancy said that he might have passed other people while he walked away from the building. He did not recall if people were sitting on the benches outside. There were street lights illuminating the sidewalk.

Chancy explained that there was about a 10-second gap between the first and second "hey, yo." No one else was in the vicinity of the two officers. Chancy stated that when Respondent approached him, Respondent told him that he "saw something in my hand." Chancy showed him his hands. He did not recall Respondent asking him for his identification. Chancy was not placed in handcuffs but did not recall if Respondent told him that he was free to leave. The entire stop took "about a minute or so."

Upon examination by the Court, Chancy clarified that when he stood in front of the mailboxes, Person A stood behind Chancy, on Chancy's right. Chancy explained that he did not ask his landlord to fix the mailbox because it was something that he could do on his own.



Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a four-year member of the Department, was assigned to the Impact unit of Police Service Area 5. On June 1, 2012, he worked with his partner, Caraballo, and was assigned to conduct vertical patrols in the [REDACTED]. One of these verticals was at [REDACTED]

[REDACTED] At about 2040 hours, Respondent reached the lobby. Upon entering the lobby, he observed Chancy "doing [a] hand-to-hand" with a female individual that stood by the mailboxes. No one else was present.

Respondent defined a hand to-hand as "basically an exchange for drugs and money which is done at the same time." Respondent asserted that Chancy and the woman "were just brushing hands . . . [r]ight across from each other." Respondent did not hear anything that was said between them. The individuals did not contact the mailboxes. The transaction took less than five seconds.

Respondent narrated that when he exited from the staircase, he made "direct contact" with Chancy. Chancy's "eyes were surprising," and both he and the woman immediately exited the building. Respondent called out to Chancy but Chancy continued to walk. Respondent did not observe any damage to the mailbox.

Respondent said that by this point, Chancy was a "pretty far distance" from the building because he would not stop. Respondent tried to catch up to Chancy and yelled, "[E]xcuse me, sir, stop," approximately twice. After the second time, Respondent removed his flashlight and "d[id] a distress call" by turning his flashlight on and off toward Chancy. Chancy and the

woman stopped walking and Respondent approached them. There might have been people sitting on the benches when Respondent flashed the light on Chancy.

Respondent asked Chancy what he was doing in the building. Respondent was not sure, but Chancy might have said that he lived there. Respondent frisked Chancy “for my safety along with my partner’s safety. Due to the fact that I wanted to find out if he had any weapons on him.” Respondent said he frisked Chancy’s waistline area but denied that he put his hands inside his clothing.

After Respondent determined that Chancy did not have any weapons on him, he told Chancy that he had observed him conduct a hand-to-hand transaction in the building. Chancy denied it. At that point, Person A approached him and Caraballo and “was screaming all kind of obscenities” at them.

On cross examination, Respondent admitted that he did not memorialize his observation of two individuals in the lobby on the lined portion of his memo book. He maintained, however, that he put it on the fly sheet. Respondent agreed that he did not show his CCRB interviewer what he had written down in his memo book. This was the first time that he mentioned it. Respondent acknowledged that he did not write in his memo book that he witnessed a five-second hand-to-hand transaction, that he pursued the two individuals, and that he stopped Chancy. Respondent agreed that he received a command discipline (CD) for omitted memo book entries. He said that he received the CD because he did not write Chancy’s pedigree information on the lined section of his memo book.

Respondent stated that he had made or assisted with multiple arrests for possession of a controlled substance.



Respondent did not recall the shape of the object that Chancy and the woman exchanged in the lobby. At his CCRB interview, Respondent conceded that he was not sure what the object was. Respondent testified that he did not know if the object was in a clear bag, paper bag, or aluminum foil. He did not recall the color of the object but agreed that it was not currency.

Respondent asserted that the first time he commanded Chancy and the woman to stop was as soon as they exited the building. However, at his CCRB interview, Respondent indicated that it was "[o]ver on the right side of" [REDACTED]

Respondent agreed that he did not observe a bulge in Chancy's waistline or pocket. Respondent further agreed that he did not recover money, drugs, or drug paraphernalia from Chancy. He admitted that he received a CD for failing to prepare a Stop, Question and Frisk Report Worksheet (UF-250) for his encounter with Chancy. Respondent did not recall if he questioned the woman who was with Chancy, but Caraballo might have.

On re-direct examination, Respondent testified that, at his CCRB interview, he described the exchanged object as smaller than a fist. The CCRB investigator made a copy of his memo book.

Upon questioning by the Court, Respondent admitted that the hands of Chancy and the woman already were touching when Respondent reached the hallway. They looked up when they saw Respondent. He "assume[d]" that Chancy handed the object to the woman. Respondent conceded that he did not observe Chancy hand an object to her "but they definitely touched hands." They conducted the hand-to-hand while they looked at Respondent.

On re-cross examination, Respondent agreed that the hallway doors opened audibly. He explained that although he "assumed" Chancy handed something to the woman, "I'm not saying I don't know." Rather, "in my prior arrests, they had actual similar to what would be called

hand-to-hand.” Respondent added that he stopped Chancy in good faith based on “[m]y assumptions and prior experiences and different arrests.”

### FINDINGS AND ANALYSIS

On the evening of Friday, June 1, 2012, Brian Chancy was preparing to go to dinner with his fiancée and two acquaintances. They all were at Chancy’s home in [REDACTED]

[REDACTED] Chancy testified that as they were leaving, his fiancée reminded him that the mailbox was broken and she was worried about people possibly having stolen from it.

Chancy testified that he went downstairs with his male friend from the other couple, Person A, to inspect the mailbox. The building’s mailboxes were located in the lobby, which consisted of the hallway at the top of the few steps leading into the building from the entrance doors. Chancy noticed two uniformed police officers, Respondent and Caraballo, standing in the lobby.

Chancy examined the lock and confirmed that it was broken. Because Chancy knew that he could fix the lock himself, he collected the necessary pieces and put them in his pocket.

Chancy and Person A then walked out of the building.

Respondent testified that he and Caraballo just had finished a vertical patrol. When they opened the door to the first floor hallway, Respondent observed Chancy and a *female* individual standing by the mailboxes. According to Respondent, their hands were touching. Respondent believed that this was a “hand-to-hand” transaction, that Chancy and the woman were exchanging narcotics for money. Specifically, one of them handed the other – Respondent could not tell which an “unknown object,” i.e., narcotics.



Both sides agreed that Chancy was stopped some distance away after leaving his building, but still on the grounds of [REDACTED]. This constitutes the allegation in Specification No. 1. Respondent frisked Chancy as well. This constitutes the allegation in Specification No. 2.

Various factors can lead to probable cause to believe that a drug transaction has occurred. These include whether the area has a high incidence of drug sales, an exchange of currency, the officer's experience and training, and furtive or evasive behavior of the suspects. See People v. Jones, 90 N.Y.2d 835, 837 (1997).

Respondent's observations were consistent both with criminal activity and innocent explanations. NYCHA residents are entitled to hand things to each other. On the other hand, lobbies of NYCHA buildings, and mailboxes in particular, have been known in the past to be centers of criminal activity. Respondent had seen several hand-to-hand narcotics transactions and this appeared to be another one. Chancy and the other individual were startled by the officers' appearance and left the building. While this could have been due to the large hallway door opening loudly and their prior plans, Respondent fairly could have seen it as furtive behavior. Finally, Chancy and the other person did not stop when Respondent called them. Again, they might not have heard him, but Respondent could have concluded that they were trying to evade police action.

In sum, Respondent's actions were objectively reasonable under New York law governing forcible detention of suspects. See Case No. 83153/07, p. 25 (Aug. 19, 2008). Respondent's actions thus were not "without sufficient legal authority." As such, he is found Not Guilty of Specification No. 1.

The second specification charges that Respondent frisked Chancy without sufficient legal authority. Reasonable suspicion is required for a frisk, even when the stop is justified. That suspicion can be unparticularized if the stop is for a violent crime, like robbery. Here, however, where there arguably was a "lawful detentive stop," see People v. Cantor, 36 N.Y.2d 106, 114 (1975), to investigate the possible sale of narcotics, Respondent needed an independent, reasonable belief of immediate danger to himself in order to frisk Chancy. 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).

Chancy testified that Respondent instructed him to turn around and place his hands on the gate. According to Chancy, Respondent patted down his entire body. Respondent testified that he frisked Chancy after the stop was made. He confirmed that he did so for the officers' safety, to determine whether Chancy had any weapons. Respondent gave no reason, however, that anything about the situation made him fear for his safety. He did not testify about a bulge or other sign of a weapon. He offered no evidence that any actions of Chancy or the other individual suggested violence. As such, Respondent is found 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 Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of wrongfully frisking an individual. Respondent observed the individual inside an apartment building lobby by the mailboxes. Respondent



observed what he reasonably could have believed to be a hand-to-hand transaction indicative of a narcotics exchange. The subsequent frisk, however, was unjustified because there was no basis to believe that the complainant posed any danger. Respondent also received a CD and penalty for failing to make adequate Activity Log entries and failing to file a UF 250 in this incident.

Based on the case cover sheet, the CCRB apparently offered a penalty of 5 days before trial. The Court has considered, however, that there is no evidence Respondent acted upon anything other than an apparent misunderstanding of the law and Patrol Guide. Proof of this came from the complainant's own testimony that Respondent told him he observed a hand-to-hand. The complainant was not handcuffed, arrested or summonsed. In fact, he was not even the actual CCRB complainant: apparently someone else in his party made the complaint. The entire encounter took at most over a minute.

In only four years of service, Respondent has compiled an excellent performance record (see Confidential Mem., infra). The incident in question occurred when he had only two years of service. He has no substantiated CCRB complaints other than the instant case. Re-instruction in stop, question and frisk procedures may be warranted, however. Therefore, the Court recommends that Respondent be reprimanded as a penalty in this matter (see Administrative Code § 14-115 [a]).

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner - Trials

**APPROVED**

NOV 10 2018  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



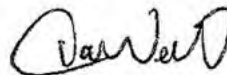
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER YAKHEEM ALLAH  
TAX REGISTRY NO. 948604  
DISCIPLINARY CASE NO. 2013-9826

In 2013, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. On his two previous evaluations, he was rated 3.5 "Highly Competent/Competent" and 4.0 "Highly Competent." He has been awarded a medal for Excellent Police Duty. [REDACTED]  
[REDACTED]

Respondent was issued a Schedule B Command Discipline for failing to prepare a UF-250 and make Activity Log entries for his participation in the June 1, 2012, stop. For this misconduct he forfeited a penalty of four hours. Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials