



POLICE DEPARTMENT

March 4, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Shaquan Harvin
Tax Registry 926934
101 Precinct
Disciplinary Case No. 84134/08

The above-named member of the Department appeared before the Court on November 19, 2009, charged with the following:

1. Said Police Officer, Shaquan Harvin, assigned to the 101st Precinct, while on duty, at or about 0930 hours on December 14, 2006, having arrested an individual known to this Department for criminal trespassing, did thereafter abuse his authority in that Police Officer Harvin escorted said individual to a holding cell within the confines of the 101st Precinct, where two other prisoners were lodged and ordered said individual to disrobe in front of the other prisoners.

P.G. 208-05, Page 2, Paragraph 1C (2) – ARREST-GENERAL SEARCH
GUIDELINES

2. Said Police Officer, Shaquan Harvin, assigned as indicated in Specification Number One (1), at the time, date, and location indicated in Specification Number One (1), was wrongfully discourteous to an individual known to this Department, to wit: said Officer responded to the said individual's request to file a complaint by stating: "I know you want to make a punk-ass complaint," or "I know you want to make a bullshit complaint."

P.G. 203-09, Page 1, Paragraph 2 – DISCOURTESY TO CIVILIAN

3. Said Police Officer, Shaquan Harvin, assigned as indicated in Specification Number One (1), at the time, date, and location indicated in Specification Number One (1), did wrongfully and without just cause abuse his authority as a member of the New York City Police Department, to wit: said Officer refused to process a request to make a complaint.

P.G. 207-31, Page 1 – PROCESSING CIVILIAN COMPLAINTS

The Department was represented by Nancy Lichtenstein, Esq., Department Advocate's Office, and the Respondent was represented by Craig R. Hayes, Esq.

The 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

The Respondent has been found Not Guilty of Specification Nos. 1 and 2. It is recommended that Specification No.3 be dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department offered the out-of-court statement of [REDACTED], and called John Simmons as its witness.

Interview of [REDACTED]¹

An official investigation into Civilian Complaint Review Board (CCRB) Case No. 200616847 by Investigator Ables was conducted on April 11, 2007. The case

¹ [REDACTED] was served with a subpoena to appear at this disciplinary hearing but he failed to appear despite having conversations with the Assistant Department Advocate about the case. Also, a stipulation was entered into between the parties, that if a CCRB investigator was called to testify, she would have stated that based on public records, [REDACTED] had three felony convictions, 14 misdemeanor convictions and had used seven, separate aliases in his criminal career.

involved an allegation of misconduct against members of the Department. The interview of [REDACTED] ([REDACTED]) took place at the Eric M. Taylor Center on Rikers Island.

[REDACTED] stated that he was 41 years old and resided at [REDACTED] in [REDACTED] Queens. He acknowledged that the incident took place on December 14, 2006 at approximately 9:30 a.m. He also acknowledged that John Simmons (Simmons) was arrested inside a laundromat located at 289 Beach 14th Street. [REDACTED] stated that he was inside of a vehicle already under arrest looking inside the laundromat when the incident occurred. He explained that initially he [REDACTED] was walking when a police officer jumped out of a car and motioned for him to come toward him. The officers then said, "Put your hand on the hood of the car." [REDACTED] said he placed his hand on the hood of the car as the police officer began to pat him down. He heard the officer say that he recovered a controlled substance and [REDACTED] said he also recovered a crack pipe. [REDACTED] said the officer then placed him under arrest by putting handcuffs on him and putting him in the backseat of a car. [REDACTED] identified this officer by the name he believed to be Bowman. He said his name was on his shield. He described him as a male black, approximately five feet eight inches with a muscular build. He also stated that he had dreadlocks and side burns.

[REDACTED] stated that he was really upset about the incident because he felt he was violated. He stated that he had not done anything wrong. He simply walked out of his building, Bowman called him over, started to search him illegally without asking him for identification, and then recovered what he had on his person. He said Bowman then threw him in the car, went into the laundromat and harassed the man that was in the laundromat (later identified as John Simmons).

█████ stated that Bowman walked into the laundromat where he saw Simmons playing a video game. █████ saw Bowman choke Simmons, "snatch" him off of the video game, pat him down and then place him in handcuffs. █████t noted that Bowman did not recover anything. He just threw Simmons in the car along with himself. █████ said he heard Simmons state, "What, I'm the super in the building." █████ observed neighbors come out of the building who confirmed that Simmons was the superintendent of the building. He heard the officer say that it does not matter, that Simmons was going to the precinct because they had a complaint about someone hanging around the laundromat selling drugs.

█████ stated that they were then transported to the station house. After careful thought, he recalled that he was transported in the car that Bowman was driving and an officer (he identified as Harvey) was seated in the passenger seat.² He stated that Simmons was transported in a marked police van.

Once at the station house, █████ stated that he decided to just cooperate with the process. He said, "You know what, I'm just going to go through it." He stated, however, that they began to strip search Simmons. He questioned why they were strip searching Simmons and he was told to mind his own business. █████ said he inquired, "Is he under arrest?" And Harvey responded, "He got the cuffs on him, he's under arrest."

█████ explained that he had problems in the past with Harvey. He stated that Harvey was in uniform the day of the incident. He was a black male, approximately six feet tall with a muscular build. He further stated that he was taller than Bowman and the other officer who was white. He said the Caucasian officer who was on the scene was not

² █████ testified that he identified an officer by the name of "Harvey" based on the name that was on his badge. He further explained that there was a number along with the badge but he could not recall what the number was.

really doing anything and he did not get his name. He estimated his height to be about five feet eight inches, the same height as Bowman. He described him as having a regular build.

██████ was asked to describe in more detail the circumstances of his arrest. He said the officer with the dread locks (Bowman) got out of his car and told him to come and Bowman then patted him down. He said he went around his waist in a regular manner looking for weapons. When he realized he was unarmed, he began to dig into his coat pockets and his pants pocket looking for whatever he could find. He explained that Bowman found what he used as a crack pipe inside the lining of his coat because his coat had a hole in it. ██████ stated that it was something that Bowman had to know was not a weapon, it was an antenna piece. ██████ explained that he used a little antenna that came off of a radio; he put "screen in it" and smoked out of that item. He estimated that the antenna was approximately two inches in length. He stated that after he was arrested by Bowman and placed in the car, he noticed Harvey. Wright stated that he made comments to Harvey because he had been arrested by him three to four times in the past. He said to Harvey, "You know that I smoke crack cocaine and what is it you probably need a body...fill a quota or whatever...and he is using me." ██████ denied using crack cocaine on that date. ██████ acknowledged that Bowman had told him to put his hand on the car and that he complied with his order as the pat down took place.

██████ testified that after he was placed in the car, Harvey and the Caucasian officer went into the laundromat to confront Simmons. He stated that a few moments later, Bowman followed them into the laundromat. ██████ said he saw the officer patting down Simmons as well as looking around the laundromat into garbage cans and such.

█████ said after they handcuffed Simmons, he was placed in the vehicle with him. He heard Harvey state that Simmons did not have identification and Simmons responded that all of the people coming out of the building had verified who he was. He heard Harvey state, "No, I don't want to hear that you don't have any I.D." Prior to placing Simmons into the car he recalled all three officers patting Simmons down, going between his legs, going into his jacket pockets as well as his pants pocket and taking money out. █████ identified Harvey as the officer who pulled money out of Simmons' pocket and placed it back in, as well as handcuffed Simmons.

█████ stated that for some of the time, when he was inside of the car, the door was open and he could hear the conversation between Simmons and Harvey. He heard Simmons state that he lived across the street and his wife was there and she could get his identification and the officers told him, "No" that he had to go to the precinct.

Once at the station house, █████ stated that he was placed in a holding cell. He was seated on a bench in the holding cell and the bars were in front of him. Off to the side he observed Harvey and the white officer with Simmons as they began to take his shirt and his hat. He heard Simmons state that his girlfriend was outside with his wallet, but Harvey insisted on searching him and violating his rights. █████ stated that Harvey never took off Simmons's clothes, he directed him to hand him each piece of clothing, first his hat and then his coat. Simmons was wearing a black "skully" cap and a North Face down jacket. Harvey had him remove his shirt and his pants as well as his shoes. He could not recall the details of the type of shirt or pants Simmons was wearing. Once Simmons was down to his boxer shorts, █████ testified that they moved him further to a wall and he could not observe anymore; but he heard them direct Simmons to squat.

█████ testified that this was taking place out of view because if you opened the door to the area he was in, a female could walk in, so once Simmons was naked he did not have a view of him. █████ said he did see Harvey shaking out Simmons's boxer shorts and the other officer was checking the clothing again. █████ said he continued to say, "That's a bunch of bullsh- - y'all not suppose to be stripping that man like that. That man is not under arrest. You ain't have nothing, he didn't do nothing wrong, why are y'all stripping him?" Harvey replied, "Mind your business." █████ said he had back and forth conversation with Harvey. He asked Harvey what was Simmons under arrest for and he stated that there was a big pause and then Harvey replied, "I don't have to answer to you."

█████ stated that Simmons was very cooperative during the process. He said you could tell that Simmons was angry, but he cooperated and stated that he was going to go through the procedures. He recalled that Simmons did question for a minute or two what was going on before taking off his clothing. █████ stated that once Simmons's wife arrived, he was released. █████ recalled Simmons stating that he was going to file a complaint and Bowman told him to do what he has to do. █████ was asked if he knew whether Simmons sold drugs and █████ stated, "He doesn't do anything other than take care of the building, clean up the garbage and help people with their busted pipes because he is the super of the building." █████ stated that he did have an exchange of profanity between himself and Harvey but he [Harvey] precipitated the profanity. At one point, Harvey told him that he let him go and he should have locked him up in the past. Harvey also told █████ that he did not lock him up the other officer did, but █████ replied to him, "Yeah because you told him something that I probably be dirty... something you

told him that.” [REDACTED] concluded that he told Simmons that he should not let the officers get away with what they did.

John Simmons

Simmons testified that he is the superintendent of three buildings in [REDACTED]. He explained that he is the superintendent of one senior citizen building with 30 apartments, another unit located at [REDACTED] 150 units and the third unit is located at [REDACTED], 150 units. He has been the superintendent for over five years working for the same company and buildings. He stated that his current address is [REDACTED].

On December 14, 2006, Simmons testified that he was residing at [REDACTED]. He stated that at approximately 9:30 a.m., he was in the laundromat across the street from his house. He said when he got into the laundromat he went to use the telephone inside. While inside the laundromat using the telephone two officers approached him. One was a smaller, Caucasian man about five feet seven or five feet eight inches in height. The other officer was a black male approximately 200 pounds about six feet tall. He found out that their names were McHugh and Harvin, respectively. Simmons said he believed he learned the name of McHugh from his name tag once he arrived at the precinct but he said once he filed the complaint he learned all the information he needed. Simmons said he was asked for identification. He inquired why he needed identification to be in a public place using a public telephone. He was informed by Harvin (identified as the Respondent) to hang up the phone. Simmons was then taken out of the laundromat and placed under arrest. Simmons said he was told that

he was placed under arrest because he did not have identification. Once under arrest he was placed in front of his place of employment in handcuffs for approximately ten to 15 minutes.

Eventually Sergeant Lopez came to the location in a van. Simmons said he saw several people come to Lopez and explain Simmons's position and that they knew Simmons. He even saw the manager of the laundromat approach the sergeant. Lopez advised the manager that since Simmons did not have identification he would be transported, but it should be a, "in-and-out thing;" if he did not do anything he should be "right out" of the station house. Simmons stated that there was someone else in a black car that had already been placed in police custody. He said he learned later on that it was [REDACTED]. He explained that [REDACTED] was someone he knew for several years who lived in the neighborhood. He stated that [REDACTED]'s mother lived in one of the buildings that he works at and so he sees [REDACTED] often.

Simmons testified that once he got to the station house he was put into a cell and he was eventually told to take off his clothing. He was completely naked as he was stripped searched. He explained that he was taken outside of the cell where he was stripped searched by the Respondent. He also stated that there was another officer named McHugh in the vicinity. Simmons said that the Respondent demanded that he take off his clothes and strip down to his tank top and boxer shorts and then the Respondent demanded that he take those off as well. Simmons said he inquired whether the Respondent was gay and the Respondent told him that he was not "playing" with him so Simmons decided to cooperate and continued to remove his clothing. Simmons said that he could see [REDACTED], but he was really not focused on the people in the cell

area. He was more upset that his lack of identification led to a strip search.

Following the strip search, Simmons stated that he put back on his clothing and was advised by the Respondent that there were no warrants against him. Simmons informed him that he knew that and that he works everyday just like the Respondent. He further told the Respondent that there were several people explaining to him who he was and where he lived. He even stated that his fiancée came down when he was handcuffed and told the officers that she could go upstairs and get his wallet, but she was told to get away from the scene. Simmons stated that he attempted to make a complaint with one of the officers in the station house, but he was told that the Respondent did not do anything to him. Later the Respondent came over to him and informed him that he heard that he wanted to make a "fucking punk-ass complaint." The Respondent explained to him that he had received a complaint. Simmons responded that he hopes the complaint was sufficient but it would not be enough to prevent him from filing a complaint against him. The Respondent stressed that he did not do anything wrong.

Simmons said he attempted to file a complaint at the station house, but each time he was removed from the cell he was then placed back in there for 45 minutes and this occurred back and forth four to five times. Eventually he spoke with [REDACTED] who told him that if he continues to request to make a complaint he will never leave the station house and that he should file the complaint after he is released from custody. Simmons stated that before he was released he was issued a summons. He asked what he was going to get a summons for and he was told it was for disorderly conduct. However, when he received the summons it was for criminal trespass and Simmons stated that this was not only the place where he resided, but also the place where he worked, [REDACTED]

██████████. Simmons testified that when he went to court on the summons it was dismissed by the clerk. He stated that the summons was illegible, that there was no information regarding the officers on the summons and his date of birth was incorrect.

Simmons was questioned whether he specifically asked the Respondent to file a complaint and he stated, "I don't believe so. I believe - - because he did not come back to release me. Someone else did."

During cross-examination, Simmons acknowledged that he did not believe he asked the Respondent to file a complaint. Simmons admitted that the events were traumatic and that within a week of the incident he filed a complaint with the CCRB. He agreed that his memory of the events a week after the incident was better than it would be today. He disagreed that his memory was better immediately after the incident. He explained that he was upset and so he may have been mistaken about a few things.

Simmons acknowledged that when he called CCRB he described the two officers who stopped and arrested him as a white officer and a black officer. When asked whether the white officer was McHugh and the black officer was Atkinson, Simmons stated that Atkinson was the officer waiting to put him in the holding cell. He denied stating that Atkinson was with McHugh. Simmons denied stating to CCRB that Atkinson was the officer who stripped searched him. He was read a portion of his CCRB interview which stated:

Female voice: Atkinson. Atkinson okay. And who stripped searched you?

Simmons: That was the black one. Um, Atkinson.

Simmons stated that he must have been mixing up the officer who was next to him with the Respondent because he did not know the Respondent's name. He said McHugh had a name tag and Atkinson had a name tag but they looked very different from each other. Simmons said he does not remember stating that Atkinson did the strip search but he said he was mentally upset and probably made a mistake.

Simmons also denied stating that Atkinson was the officer who made the statement about the "punk-ass complaint." He was read another portion of his CCRB statement on page 14:

Question: Oh. He is the one that said that; Atkinson?

Answer: "Yeah. He sent the other cops here because I asked the other white officer - - umm to - - told him that I wanted to make a complaint so immediately he left out the holding, and I guess he went to tell him. He came back a little while later telling me how they told him I want to make a punk-ass complaint."

Simmons stated that he recalled the question and answer but again he was confused and was mixing up Atkinson with the Respondent.

Simmons acknowledged that when he was in the station house getting stripped searched his back was to the individuals who were in the cells. When asked whether the officers made an attempt to push him back in an area behind the wall away from the cells, Simmons responded by asking why he could not be taken to the bathroom. Simmons then denied that the officers pushed him back. Simmons was confronted with a statement he made during his CCRB interview held on February 8, 2007:

Question: "See I had my back turned to this. So I didn't know how much they saw of me, but later they told me yeah, I mean - - I seen everything when they were strip searching you. When they made me take off the underwear, so this way those guys couldn't see, man."

Simmons acknowledged making this statement to the CCRB. Simmons reiterated that his back was turned to the other prisoners but they still told him that they were able to see everything during the strip search.

Simmons was asked whether he recalled telling CCRB that it was officers McHugh and Ross who searched him at the station house. Simmons stated that he could not recall. Simmons was read a portion of his CCRB interview which stated such and he stated that he did not recall that transpiring. Simmons was asked whether he recalled stating that Ross was the one giving him instructions during the strip search and Simmons stated that he did not recall that either. Simmons was read a portion of his CCRB interview on page 43, line 10, which stated such and Simmons stated that he did not recall such information. The stipulation was entered into between the parties that the Respondent's attorney read accurately from the CCRB interview.

Simmons acknowledged that within six days of the incident he had contacted an attorney to file a civil lawsuit. Simmons was shown a document and he acknowledged that it was his signature on the Notice of Claim for the lawsuit [Respondent's Exhibit (RX) A]. Simmons admitted he alleged that a black officer named Atkinson as well as other agents of the Police Department humiliated him during the strip search. He also admitted that the Respondent's name was absent in the Notice of Claim. Simmons admitted that in the Notice of Claim he accused Atkinson of being verbally abusive when he requested to file a complaint. Simmons responded that he did not know the Respondent's name at that time and that he confused the two officers names. Simmons stated that he never told the attorney that he was confused about the officers. He stated

that the attorney informed him that the names of whoever was involved in the incident would be revealed.

Simmons was asked if he recalled stating that the first officer and the last officer he inquired about filing a complaint were white officers. Simmons stated that he could not recall such information. Simmons was shown two questions and answers from his CCRB statement. He replied that he could not recall making the statements but that he might have, he does not remember.

During redirect examination, Simmons stated that the same black officer that approached him in the laundromat and placed him under arrest, was the same officer that stripped searched him. Simmons stated that the black officer who approached him in the laundromat was accompanied by a white officer whose name was McHugh. He could not recall exactly how he learned McHugh's name, but he stated that it was either on his name tag or he learned it in the station house. Simmons was asked who the officer who arrested him was and he stated, "Shquan Harvin."

During further cross-examination, Simmons was asked who told him the arresting officer's name and he stated that he did not remember. He was asked if [REDACTED] informed him of that information and he stated that he could not recall. He denied [REDACTED] telling him that he had numerous arrests in the past with the Respondent. When asked whether he was aware that [REDACTED] had several arrests in his life, Simmons stated that he was aware. Simmons denied knowing that in the past the Respondent had arrested [REDACTED]. When asked how many officers he encountered from the laundromat until the time he was at the station house, Simmons stated between seven to eight police officers. When

asked of the seven or eight police officers how many were African-American, Simmons responded, "Two."

During questioning by the Court, Simmons acknowledged that he was stopped by the police inside the laundromat. He stated that that was not the address where he lived. He noted that he received a summons for criminal trespass and the location listed on the summons was the place where he lived and worked. Simmons acknowledged being placed under arrest and put in a prisoner van but he denied ever being asked any pedigree information such as his age and date of birth. With regard to his civil lawsuit, Simmons stated that he just decided to forget about it and he never called back the lawyers. He stated that they would occasionally send him information but he never returned their telephone calls.

Simmons stated that of the seven or eight officers that he had contact with, at the time he filed his Notice of Claim he only knew the name of Atkinson, McHugh and Lopez from their name tags. Simmons stated that he was never charged with criminal possession of a controlled substance, his only charge was criminal trespass.

The Respondent's Case

A stipulation was entered into between the parties that on December 14, 2006, based on the investigation that was done by members of the 101 Precinct; Sergeant Juan Lopez authorized a strip search of John Simmons.

The Respondent called Police Officer John McHugh and testified on his own behalf.

Police Officer John McHugh

McHugh is a five-year member of the Department currently assigned to the 101 Precinct. McHugh testified that there was a break in service involving a time that he was assigned to the New York City Police Department. He stated that he was appointed to the position with the Police Department July 1, 2003. He left the Department in January 2008 to join the New York City Fire Department. He then returned to the Police Department in February 2009.

McHugh testified that on December 14, 2006, he was assigned to the 101 Precinct Street Narcotics Enforcement Unit (SNEU). He stated his purpose while working for that unit was to involve himself with low level drug dealers. He estimated that he has made approximately 200 arrests in his career, the majority of which involved narcotics. He said he believed he was in uniform on December 14. He could not recall who he worked with on that day aside from the Respondent. He did recall that the supervisor on that date was Lopez. McHugh testified that about 9:30 a.m. on the incident date he was involved in the arrest of Simmons. He stated that Simmons was stopped for coming out of the building for trespass. He was asked for identification and when he did not have any he was arrested and taken to the 101 Precinct. He recalled that there were two individuals who were placed under arrest. He stated that he first made contact with Simmons at the laundromat. McHugh could not recall who he was with on the date that Simmons was arrested. McHugh acknowledged that the other person arrested was [REDACTED]. He stated that he learned later that a crack pipe was found in the van that Simmons and [REDACTED] were transported in. He stated that the procedure once contraband or narcotics are found is that the defendants are then strip searched.

McHugh testified that on the incident date he received authorization for the strip search from Lopez. He said that he had performed dozens of strip searches in his career. Based on his training, McHugh stated that a strip search is performed in a private area of the cell area. All the clothing of the person is removed and the clothing is thoroughly checked and so is the individual. He said the defendant removes his own clothing. At no point does he make physical contact with the person being strip searched. McHugh stated that he performed all of his strip searches within the confines of the 101 Precinct. He stated that the area where the strip searches are actually performed is to the left of the cell area. He explained that there is a brick wall and on the other side of the wall is the corner where no one can see. He stated that in that corner is where the strip searches are conducted. He further explained that he has stood in that corner and that when he is standing in that corner he is absolutely unable to see inside the cells.

McHugh said that he had stood inside of the cells and that he is unable to see the corner area from inside of the cell. He explained that the area where the strip searches are conducted in the station house is the area that he was told to perform them. He acknowledged that he conducted the strip search of Simmons and he was given authorization by Lopez. He explained that he conducted a strip search of Simmons in the area that he described. He could not recall who he performed the strip with. He stated that Simmons was told to remove his clothing. His clothing was removed and given to him and the other officers to check everything thoroughly. He was told to squat and this was done behind the wall blocked from the cell's view.

McHugh testified that he worked in the SNEU team for approximately a year and a half. The unit deals with street level narcotics. He acknowledged that in his career

individuals who were arrested and searched, narcotics and paraphernalia were hidden on their bodies. He stated that Simmons never requested to file a CCRB complaint with him. McHugh stated that he was familiar with a police officer named Atkinson. He said that Atkinson works in the 101 Precinct and is assigned to the SNEU team. He said that Atkinson worked there in December of 2006, and he described him as a male black, heavy set approximately six feet tall and in his thirties.

During cross-examination, McHugh acknowledged that he worked with the Respondent on December 14, 2006. He said that he worked with the Respondent for approximately a year and a half. He explained that he resigned from the Department in January of 2008, at the time he was accepted to work for the Fire Department. He could not recall whether the Respondent was with him as he approached the laundromat. He explained that several arrests were made that day and he could not recall if the Respondent was standing next to him. He did recall, however, that they were riding in the same car.

Upon questioning by the Court, McHugh acknowledged that the first time he saw him, Simmons was exiting a building located at [REDACTED]. He then observed him walk across the street into a laundromat. He stated that Simmons was then stopped by him in the laundromat. When asked if the crack pipe was recovered on a person, in the vehicle or in the van itself, McHugh stated that he did not recover the crack pipe personally so he did not know. McHugh said that in the vicinity of the cell area there is a bathroom that is used by the prisoners. He stated that strip searches are not performed in that bathroom. He stated that he has performed dozens of strip searches at the 101 Precinct. He stated that all of the strip searches that he performed were in that

corner area that he described on the record. McHugh stated that he has an independent recollection of actually performing a strip search on Simmons but he could not recall if he was actually naked. He stated that when he does a strip search that is normally what happens. McHugh stated that he did not hear a prisoner saying that he was arrested for possession of controlled substances and he was not strip searched.

A stipulation was entered into between the parties, that if Lopez was called as a witness, he would have stated that there is an area away from the holding cells where there is a brick wall and strip searches are allowed to be conducted.³

The Respondent

The Respondent testified in his own behalf. The Respondent is nine-year member of the Department currently assigned to the 101 Precinct. He stated that he has spent his entire career at that command and is currently assigned to the SNEU team. He has spent over five years in the SNEU team and has made over 500 arrests. He estimated that approximately 300 of those arrests were drug-related.

The Respondent testified that he was working with the SNEU team on December 14, 2006. Other members of the team included: Lopez, Bazilio, McHugh, Connell, Atkinson and Melissa Picard [phonetic]. The Respondent stated that at approximately 9:30 a.m. he made an arrest of a female on 14 Street for criminal possession of a controlled substance. Shortly thereafter, while parked on 14 Street, he saw two males coming out of the building located at [REDACTED]. He identified the two males as [REDACTED] and Simmons. The Respondent stated that he was driving the vehicle and he did

³ The Assistant Department Advocate acknowledged that there is an area where strip searches are allowed, however, she does not agree that Lopez knew where the actual strip search of Simmons took place. Also, Lopez was not present during that strip search.

not stop those two individuals. He stated that McHugh and Bazilio got out and made the stop. He denied going into the laundromat. He stated from what he recalled, McHugh and Bazilio went into the laundromat. He described Bazilio as a male black, with the same complexion as his, with a mustache and approximately 230 to 240 pounds. He estimated Bazilio's height to be six feet. The Respondent said he never went into the laundromat and dealt with Simmons, he stayed outside with [REDACTED]. He explained that he knew [REDACTED] because he locked him up at least three times for criminal possession of a controlled substance. The Respondent stated that [REDACTED] knew who he was because he referred to him by his first name, "Hi Shaquan." The Respondent denied arresting [REDACTED] on that day.

The Respondent stated that at some point he went back to the station house. He explained that his female prisoner was transported to the station house before he was. Initially she was placed in a holding cell but then when the male prisoners arrived, she was removed from the holding cell and handcuffed in an area where a wall was outside of the cell area. He then uncuffed her and took her to the muster room which is in the back of the station house. The Respondent stated that he stayed with his prisoner and completed paperwork. He denied ever going back into the cell where the strip search was being conducted. He denied ever standing around and either performing the strip search of Simmons or standing and witnessing the strip search of Simmons. The Respondent said he did have contact with Simmons later at the station house when he was instructed by Lopez to hand Simmons a summons. He said that he filled out the summons. He denied that Simmons ever stated to him that he wanted to file a complaint. The Respondent also denied making any statement to the effect that Simmons wanted to make

a “punk-ass complaint.” The Respondent explained that in the past he has had people express that they wanted to file a complaint. He stated that he would call a supervisor over and direct the supervisor to the person’s attention.

The Respondent testified that the area described, behind the wall, next to the bathroom is the area where strip searches are conducted at the 101 Precinct. He stated that the area is not visible to individuals in the holding cell area. He testified that he had performed strip searches in the 101 Precinct in that area and he estimated that he performed 300 to 400 strip searches in the command. He said that the choice of area to conduct the strip searches was decided by supervisors in the command.

During cross-examination, the Respondent stated that he was not the arresting officer of Simmons. He was shown the command log of December 14, 2006, to refresh his recollection. After review of the command log, the Respondent testified that he was not the arresting officer of Simmons. He explained that he did not handcuff him nor process him, nor stop him at the laundromat.⁴ The Respondent acknowledged that reviewing the command log refreshed his recollection that he gave Simmons the summons. The Respondent stated that he did not place Simmons in the vehicle to transport him to the station house and he did not participate in the decision to arrest Simmons for criminal trespass. The Respondent was read an excerpt from his CCRB interview held on September 10, 2007, which commenced on page five. It stated in sum and substance that three officers exited a vehicle, stopped the individuals exiting the building and the Respondent acknowledged that they were stopped for trespassing. He noted in the interview that none of the individuals had identification and when asked

⁴ The stipulation was entered into between the parties that the command log for the 101 precinct on December 14, 2006, indicates that the Respondent was the arresting officer of John Simmons.

whose decision it was to stop them the Respondent stated in his CCRB interview, "It was everybody's decision." The Respondent acknowledged that if that is what is stated on the paper, he remembered those questions and answers. The Respondent acknowledged that he did not know what happened to Simmons once they arrived at the station house but he admitted that he issued him a summons for criminal trespass.

During redirect examination, the Respondent acknowledged that there are situations where one officer stops someone but another officer becomes the arresting officer on the paper work. Aside from issuing the summons, the Respondent stated that he had no other contact with Simmons. He believed that Lopez directed him to issue the summons to Simmons.

Upon questioning by the Court, the Respondent stated that on December 14, 2006, there were four black officers assigned to the SNEU team. He stated that it was himself, Bazilio, Connell and Atkinson. He described Bazilio as his height and weight with a mustache and with his same complexion. He described Connell as the same height except that he is very skinny. He described Atkinson as the same height, slightly heavier and with his same complexion. He stated that they all had the same haircut which they have had since 2006. He noted that people normally confuse him and Atkinson because they look a lot alike. The Respondent stated on the incident date the three of them were working together, himself, McHugh and Bazilio. He stated that he believed that they all returned to the command but that he could not recall where everyone was at the station house.

FINDINGS AND ANALYSIS

Specification No. 1

The Respondent stands charged herein with abuse of authority in that while on duty at or about 0930 hours on December 14, 2006, having arrested an individual known to the Department for criminal trespass, did thereafter abuse his authority in that he escorted said individual to a holding cell within the confines of the 101 Precinct, where two prisoners were lodged and ordered said individual to disrobe in front of the other prisoners. The Respondent is found Not Guilty as charged.

Evidence adduced at trial established that John Simmons (Simmons) was arrested by the Respondent for criminal trespass. After being transported to the station house, a strip search of Simmons was authorized by Sergeant Juan Lopez. By all accounts the strip search was not conducted in a bathroom, but rather in a hallway which had a wall some distance from the holding cell. McHugh testified that in the 101 Precinct Station House, this area is designated for conducting strip searches. The hearsay statement of [REDACTED] was admitted into evidence (DX 1 and 1A). [REDACTED] stated that Simmons was searched about ten feet away from the holding cell where he [REDACTED] was lodged. Although [REDACTED] said he was able to see when Simmons's hat, coat, shoes, shirt and pants were removed, he stated that Simmons was then moved to an area beyond his vision and he believed Simmons was asked to remove his underwear. [REDACTED] observed an officer shaking out Simmons's underwear after it was removed. He also heard an officer telling Simmons to squat.

Even Simmons, although denying it initially at trial, admitted under rigorous cross-examination that he told the CCRB investigator during his interview that the

officers moved him away so that the other men could not see him. It is clear from this evidence that although [REDACTED] was able to likely stand by the bars and see the beginning of Simmons being disrobed, he was unable to see the entire strip search of him because Simmons was moved to an area beyond the sight of prisoners in the holding cell area.

[REDACTED] stated that he protested about the strip search of Simmons and it is likely that his remarks led the officers to move Simmons further from any sight of the other prisoners during the search.

While this Court agrees that Simmons was disrobed to some extent in the presence of prisoners, to understand the gravamen of this charge, the Court looks to the opening statement delivered by the Assistant Department Advocate:

...Mr. Simmons will tell you that when he got to the Precinct, the 101 Precinct, a regular search of him was conducted at the desk by an officer and then Officer Harvin and Officer McHugh then brought Mr. Simmons to the cell area. While Mr. Simmons was standing directly in front of a holding cell, Officer Harvin instructed Mr. Simmons to remove his clothing one at a time. Officer Harvin ordered Mr. Simmons to take his shirt and underwear off so that he was completely nude. Then Officer Harvin instructed Mr. Simmons to squat.

Mr. [REDACTED], who was being held in the cell directly in front of where Mr. Simmons was being strip-searched, was able to see Mr. Simmons nude. Additionally, there was another prisoner in the cell with Mr. [REDACTED] and they were protesting Mr. Simmons being strip-searched.

Clearly there was no evidence presented at this trial to support a claim that Simmons was nude directly in front of the holding cell area in front of [REDACTED] and another prisoner. [REDACTED] did not say that he observed Simmons nude. [REDACTED] did not state that he observed Simmons squat. Even Simmons testified that at one point during the strip search he was moved away from the view of the prisoners.

Accordingly, I find the Respondent Not Guilty of Specification No 1.

Specification No. 2

The Respondent stands charged with being wrongfully discourteous to an individual known to this Department in that the Respondent responded to the individual's request to file a complaint by stating, "I know you want to make a punk-ass complaint," or "I know you want to make a bullshit complaint." The Respondent is found Not Guilty. Simmons testified at trial that he had no independent recollection of ever asking the Respondent to file a complaint. Therefore, the Respondent could not have stated, in response to the request to file a complaint, the discourteous remarks as alleged.

In addition, during his CCRB interview, which was closer in time to the incident than the trial date, Simmons made no mention of the Respondent. In fact, he alleged that it was Atkinson who made the "punk-ass complaint" remark. Simmons even filed a Notice of Claim in a civil cause of action where he alleged that it was Atkinson who was verbally abusive toward him when he requested to file a complaint (see Respondent's Exhibit A). At trial, Simmons tried to explain that he confused the Respondent for Atkinson. Simmons acknowledged, however, that he was upset by the strip search and confused other things. He also admitted that on the incident date, he had contact with seven or eight police officers, of which four were black, including the Respondent. The Court was able to establish through the testimony of witnesses that at least three of the four black officers were the same height, approximate weight and build of the Respondent. Thus, without Simmons being certain, the Department is unable to establish by a preponderance of the credible evidence that it was the Respondent who made the discourteous remarks to Simmons following Simmons's request to file a complaint.

Accordingly, I find the Respondent Not Guilty of Specification No. 2

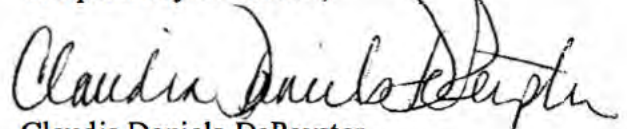
Specification No. 3

The Respondent stands charged with wrongfully and without just cause abusing his authority as a member of the New York City Police Department by refusing to process a request to make a complaint. The Respondent is found Not Guilty and it is recommended that this Specification be dismissed.

At the conclusion of this proceeding, the Assistant Department Advocate moved to dismiss Specification No. 3. Simmons testified candidly at trial and stated that he could not recall if he asked the Respondent about filing a complaint. He recalled making the request to several members of the service in the station house on the night of the incident, but had no independent recollection of ever asking the Respondent to file a complaint. Based on this testimony, Specification No. 3 could not be established by a preponderance of the credible evidence.

Accordingly, I recommend that Specification No. 3 be dismissed.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials

APPROVED
JUN 08 2010

RAYMOND W. KELLY
POLICE COMMISSIONER