



POLICE DEPARTMENT CITY OF NEW YORK

October 24, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Edgar Gonzalez  
Tax Registry No. 936680  
Gang Squad Brooklyn North  
Disciplinary Case No. 2015-13417

Sergeant Miguel Marte  
Tax Registry No. 927135  
Gang Squad Brooklyn North  
Disciplinary Case No. 2015-13416

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**Charges and Specifications:**

Disciplinary Case No. 2015-13417

1. Said Detective Edgar Gonzalez, while on duty, assigned to the Gang Squad Brooklyn North, and in the rank of Police Officer on or about January 24, 2014, in the vicinity of [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said member of the service frisked Person B without sufficient legal authority.

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

2. Said Detective Edgar Gonzalez, while on duty, assigned to the Gang Squad Brooklyn North, and in the rank of Police Officer on or about January 24, 2014, in the vicinity of [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said member of the service searched Person B without sufficient legal authority.

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

3. Said Detective Edgar Gonzalez, while on duty, assigned to the Gang Squad Brooklyn North, and in the rank of Police Officer on or about January 24, 2014, in the vicinity of [REDACTED], Kings County, failed to prepare memo book entries, as required.

P.G. 212-08 ACTIVITY LOGS

Disciplinary Case No. 2015-13416

1. Said Sergeant Miguel Marte, while on duty and assigned to the Gang Squad Brooklyn North, on or about January 24, 2014, in the vicinity of [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said sergeant failed to ensure that a Stop and Frisk (UF-250) report was prepared as required after the stop of Person B

P.G. 212-11, Page 1, Paragraph 6 STOP AND FRISK

**Appearances:**

For the Department: Samuel Yee, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondents: James Moschella, Esq.  
Karasyk & Moschella, LLP  
233 Broadway-Suite 2340  
New York, NY 10279

John D'Alessandro, Esq.  
Crosswest Office Center  
399 Knollwood Road – Suite 220  
White Plains, NY 10603

**Hearing Date:**

September 7, 2016

**Decision:**

Respondent Gonzalez:

Specification 1: Not Guilty  
Specification 2: Not Guilty  
Specification 3: Guilty

Respondent Marte:

Specification 1: Not Guilty

**Trial Commissioner:**

ADCT Jeff S. Adler

**REPORT AND RECOMMENDATION**

The above-named members of the Department appeared before me on September 7, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. Previously recorded CCRB interviews of Person A and Person B



were admitted into evidence, and each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

### DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Gonzalez not guilty of Specifications 1 and 2, but guilty of Specification 3, and Respondent Marte not guilty of the one specification against him.

### FINDINGS AND ANALYSIS

On the evening of January 24, 2014, Respondents and two other members of the Brooklyn North Gang Squad were in an unmarked car on routine patrol in the area of [REDACTED] in Kings County. At about 2340 hours, the officers came upon two individuals, Person A and Person B, who were standing near the subway entrance. Person A was arrested for possession of marijuana, while Person B was permitted to leave. At issue is whether Person B was frisked and searched before he was allowed to depart from the location. There also is an issue about the lack of detail in Respondent Gonzalez's activity log.

Neither Person A nor Person B appeared to testify at the trial. Instead, copies of their recorded statements to CCRB, and the accompanying transcripts, were admitted into evidence. Person A was interviewed by phone in the first week of February, 2014 (Dept. Ex. 1 and 1A), and in-person on March 10, 2014 (Dept. Ex. 2 and 2A). Person B was interviewed by phone on November 5, 2014 (Dept. Ex. 3 and 3A).

Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative

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

Person B, who had a [REDACTED] misdemeanor conviction for criminal possession of a controlled substance, was incarcerated at [REDACTED] at the time of his CCRB interview. Person B began his statement by acknowledging that he couldn't recall too much of the January 24 encounter. (Dept. Ex. 3A at 7) According to Person B, he and Person A were standing near the subway, smoking; he wasn't sure if they were smoking cigarettes or marijuana, but believed it was the latter. (Dept. Ex. 3A at 11, 15, 18). Four officers pulled up in a car and approached them; the officers were in plainclothes, but had their badges out around their necks. (Dept. Ex. 3A at 16) The officers recovered a large bag of marijuana from Person A, and placed him under arrest. (Dept. Ex. 3A at 8, 11, 22)

As for his own interaction with the officers, Person B initially stated that he, too, was searched. (Dept. Ex. 3A at 11, 20). However, when asked to describe in more detail what the officers did, Person B stated they did a "regular frisk", sliding their hands over his body without going into his pocket. (Dept. Ex. 3A at 20-21) Person B also stated that the officers allowed him to walk off right away without running his name, for which he felt fortunate since he was "in some crap" himself at the time and just wanted to get out of there. (Dept. Ex. 3A at 24)



In his initial phone interview with CCRB, Person A stated that he and Person B were smoking a cigarette when the four officers exited their car and approached. The officers started searching the two men and also searched both of their names. (Dept. Ex. 1A at 9-10) Person A claimed that the officers did not recover anything from his person, "no weapon, no narcotics, nothing." (Dept. Ex. 1A at 11) Person B was let go, but Person A was brought to the precinct. Person A stated that when he objected to being fingerprinted, the officers told him that if he didn't allow them to fingerprint him, they would say he had something on him and put him through the system. Person A agreed to be printed, and he received a DAT. (Dept. Ex. 1A at 13-14)

During his follow-up interview on March 10, Person A retold his basic story of how they were smoking a cigarette when the officers approached; Person A repeatedly referred to the police as "alleged officers" since they wouldn't provide identification or tell with whom they were "bonded" and "insured". (Dept. Ex. 2A at 4, 14-15) He again stated that he was searched, and the officers were "harassing and illegally searching" Person B as well. Only Person A was taken into custody and brought to the 81 Precinct where he received a DAT for marijuana possession; the officers didn't even ask Person B for identification. (Dept. Ex. 2A at 24)

Respondent Gonzalez testified that from his rear seat on the driver's side of the vehicle, he observed Person A holding a sandwich-sized ziplock bag of what appeared to be marijuana. A second person was standing near Person A. Respondent Gonzalez, who was an officer at the time, alerted Respondent Marte, the driver, and they pulled over. Respondent Gonzalez exited the vehicle and identified himself as a police officer. As he was approaching, Respondent Gonzalez observed Person A place the bag of marijuana

inside his waistband area. Respondent Gonzalez retrieved the bag of marijuana from where he had seen Person A place it, and Person A was handcuffed. The bag contained 13 smaller bags of marijuana, possibly packaged for sale. (Tr. 36-37, 45-47) According to Respondent Gonzalez, he never frisked or searched the individual who was with Person A, since he was just standing there and wasn't doing anything illegal. Instead, when the officers first approached, Respondent Gonzalez told the individual he could leave; the individual declined, saying he was going to stay "to make sure you don't do anything to my man." Respondent Gonzalez merely asked the individual to step back while they dealt with Person A. The officers never questioned the individual, or asked him for identification. (Tr. 37-39, 57-58, 63)

Person A was brought to the precinct, where he was issued a DAT. The arrest was assigned to one of the other officers at the scene, Detective Pagan, who prepared the necessary paperwork. Respondent Gonzalez admitted he made no mention whatsoever in his activity log of the encounter, including the arrest of Person A and the recovery of marijuana. (Dept. Ex. 6) (Tr. 39-40, 54-55).

Respondent Marte testified that Respondent Gonzalez alerted him that he saw Person A holding marijuana. The sergeant stopped the car and all four officers exited the vehicle. As they approached, Respondent Marte observed Person A motion toward his waistband. Respondent Gonzalez recovered marijuana from Person A's waist, and Person A was arrested and brought to the 81 Precinct. (Tr. 68, 72-73)

According to Respondent Marte, the officers had no interaction with the other individual who was standing with Person A. They did not stop, frisk, or search the



individual, and never even learned his name. As such, they did not prepare a "Stop and Frisk" report for the individual. (Tr. 69, 71)

Specifications 1 and 2 against Respondent Gonzalez allege that he frisked and searched Person B without sufficient legal authority. Specification 1 against Respondent Marte alleges that he failed to ensure that a Stop and Frisk (UF-250) report was prepared for Person B. The two civilians both stated that the officers engaged with Person B: Person A claimed they searched him, whereas Person B described what occurred as more of a frisk. Both Respondents, meanwhile, denied any such interaction with Person B, insisting that they did not stop, frisk, or search Person B, and as such, no Stop and Frisk report was necessary.

On balance, this tribunal finds the in-court accounts provided by Respondents to be more credible than the hearsay statements of Person A and Person B. Even without being cross-examined, there were inconsistencies between the statements of the two civilians. For instance, Person A insisted that nothing was recovered from his person, whereas Person B corroborated Respondents' testimony that the officers recovered a bag of marijuana from Person A. In his statements, Person A repeatedly referred to the "alleged officers" who apprehended him, even though Person B stated that they had their shields visible around their necks. In his second interview, Person A stated that the officers harassed and searched Person B too. Person B, though, stated they merely patted him down, and let him go immediately.

Aside from the inconsistencies, Person A demonstrated an anti-police bias throughout his statements, and demonstrated a willingness to exaggerate the details of his encounter with the police while minimizing his own guilt. Person B, meanwhile, had a [REDACTED] conviction for criminal possession of a controlled substance, and acknowledged that he

"always smoke(s) marijuana." Indeed, Person B admitted that at the time of the incident he was probably smoking marijuana. On the date of his CCRB interview he was incarcerated at [REDACTED], and explained that he initially didn't appear at CCRB's office for an interview because he was "on the run." Additionally, he wasn't interviewed until nine months after the incident, and admitted he couldn't recall too much of what occurred.

Respondents, in contrast, were consistent in their accounts of what transpired, effectively corroborating each other's description of events. Both came across as professional and sincere on the witness stand. This tribunal credits their testimony that other than telling him he was free to go, the officers did not interact with Person B since they did not observe him do anything wrong. The officers did not stop, search or frisk Person B; indeed, they never even learned his name.

As such, the credible evidence has failed to establish that Respondent Gonzalez frisked or searched Person B, and I find him not guilty of Specifications 1 and 2. Since there was no stop, frisk or search of Person B, there was no reason for Respondent Marte to ensure that a UF-250 report was prepared. Accordingly, I find Respondent Marte not guilty of the one specification with which he is charged.

Additionally, it is alleged that Respondent Gonzalez failed to prepare a proper memo book entry regarding this incident, as required by Patrol Guide section 212-08. Respondent Gonzalez acknowledged that he didn't record any details of this encounter in his activity log, which is confirmed by the memo book itself (Dept. Ex. 6). He explained that the arrest of Person A was assigned to one of his colleagues, but that is not a valid justification for the complete lack of detail in his log. As the Department Advocate



pointed out, not only was Respondent Gonzalez present for the encounter, he played a major role in the observation and recovery of the marijuana. Nevertheless, he failed to make any mention of this activity in his memo book, and I find Respondent Gonzalez guilty of Specification 3.

### PENALTY RECOMMENDATION

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 Gonzalez was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent Gonzalez has been found guilty of one specification, for failing to prepare memo book entries regarding a street encounter, during which one individual was arrested and marijuana was recovered. The Department Advocate recommends that Respondent forfeit one (1) vacation day. Counsel for Respondent Gonzalez asks the tribunal to take into account that after this incident, Respondent was retrained on preparing his activity log, and he is more conscientious now about recording information in his memo book.

This tribunal is hopeful that Respondent has, indeed, learned the importance of doing a better job recording information in his activity log. On balance, though, the forfeiture of one (1) vacation day is a reasonable penalty. This was not a case where an officer omitted a single item of information in an otherwise detailed memo book entry. Rather, Respondent made absolutely no mention of anything connected with this street encounter, even though he was the officer who initially observed the marijuana and physically recovered it. Taking into account the entire circumstances in this matter, I

recommend that Respondent Gonzalez forfeit one (1) vacation day as an appropriate penalty.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

JAN 23 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
DETECTIVE EDGAR GONZALEZ  
TAX REGISTRY NO. 936680  
DISCIPLINARY CASE NO. 2015-13417

Respondent was appointed to the Department on January 10, 2005. His last three performance evaluations were 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2015 and 2016, and a 4.0 overall rating of "Highly Competent" in 2014. He has been awarded five medals for Excellent Police Duty and six medals for Meritorious Police Duty. [REDACTED]

Respondent has no prior formal disciplinary history.

Jeff S. Adler  
Assistant Deputy Commissioner Trial