



POLICE DEPARTMENT

July 11, 2023

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Angel Lopez :

Tax Registry No. 958827 :

47 Precinct :

Case No.

2019-20843

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Brian Arthur, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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

To:

HONORABLE EDWARD A. CABAN
ACTING POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Angel Lopez, on or about December 31, 2018, at approximately 0100 hours, while assigned to the 47 Precinct and on duty, in the vicinity of 236th Street, between Furman Avenue and White Plains Road, and the 47 Precinct stationhouse, Bronx County, abused his authority as a member of the New York City Police Department, in that he strip-searched Person A without sufficient legal authority.

P.G. 208-05, Page 3, Paragraph C (1)

ARRESTS – GENERAL
SEARCH GUIDELINES

2. Police Officer Angel Lopez, on or about December 31, 2018, at approximately 0100 hours, while assigned to the 47 Precinct and on duty, in the vicinity of 236th Street, between Furman Avenue and White Plains Road, and the 47 Precinct stationhouse, Bronx County, abused his authority as a member of the New York City Police Department, in that he improperly conducted a strip-search of Person A without police necessity.

P.G. 208-05, Page 4, Paragraph C (4)

ARRESTS – GENERAL
SEARCH GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 1, 2023.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called offered the hearsay statement of Person A in evidence; 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. Having evaluated all the evidence in this matter, the Tribunal finds Respondent Not Guilty of the charged misconduct.

ANALYSIS

The following is a summary of the facts which are not in dispute. On December 31, 2018, Respondent performed Anti-Crime duties in the 47 Precinct (T. 25-26). At approximately 0100 hours, Respondent and his partner conducted a car stop of a vehicle operated by Person A

[REDACTED] (T. 26-27; CCRB Ex. 2A at 3-4). After the stop, Person A was placed under arrest¹ (T. 27; *Id.* at 4). Respondent transported Person A to the 47 Precinct, where he conducted an inventory search of Person A's property in front of the precinct desk (T. 27-28). After the search, Person A was brought to the holding cell area, where Respondent conducted another search before placing him in a holding cell (T. 28).

Respondent directed Person A to remove his coat, shirt, and a ballistic vest from his torso; a quantity of marihuana fell from the vest as Person A took it off (T. 29; CCRB Ex. 2A at 5-6, 28). Respondent then directed Person A to roll down his socks and remove his shoes (T. 30; CCRB Ex. 2A at 5, 29). After Respondent searched Person A's shoes, he directed him to remove his socks; a search of the socks resulted in the seizure of seven pieces of crack cocaine (T. 31; CCRB Ex. 2A at 6, 31). Respondent then continued to search Person A's clothing; the justification for, manner of, and conduct of this portion of the search is disputed.

During the search procedures described above, Person A was in sight of two to three male detainees inside the holding cell (T. 43; CCRB Ex. 2A at 5, 24-25).

The following is a summary of the relevant evidence presented at the trial.

Body-Worn Camera Video

CCRB's Exhibit 1 in evidence is a recording obtained from Respondent's Body-Worn Camera. The entire recording is 24 minutes and 29 seconds long, but the portion concerning Respondent's interaction with Person A in the holding cell area is six minutes. The relevant part of the recording is summarized below:

21:52-22:06 Person A has both arms up and palms pressed against the wall. Respondent pats Person A's legs over the jeans he is wearing.

¹ The bases for the vehicle stop, consent search, and arrest are not disputed.

- 22:07-22:17 Person A turns around to face Respondent, his back facing the wall. Respondent tells Person A "Let me see if you have pockets in the shorts." Person A appears to be unbuttoning his jeans and pulling his jeans down.
- 22:18-22:20 Respondent pats Person A near the pocket area of his pants; his jeans are off his waist. Person A appears to be wearing a blue plaid clothing item under the black long johns he had under his jeans. Respondent asks, "Long johns?" Person A responds, "Yeah."
- 22:22-22:38 In response to Respondent's statement, Person A pulls down his long johns and exposes his underwear; Respondent then tells Person A "All right; have a seat," before asking him to take off his socks.
- 22:39-23:32 Person A's jeans are on his body, and covering his legs, while seated on the bench taking his socks off. The officers check his socks before giving them back to Person A.
- 23:33-23:34 Person A begins to speak to Respondent and his partner, but what he says is inaudible. Respondent tells Person A "Stand up . . . pants." Person A's lower body is off-camera. Person A leans over and reaches down toward his pants.
- 23:38-24:00 Respondent states to Person A "All right, you can pull the long johns up. No, pull the long johns up, yeah." He then instructs Person A to put his hands on the wall again. Respondent begins to pat down Person A's legs. It appears his jeans are pushed down on his lower body so the waistband is closer to Person A's knees, and the black long johns are pulled up, covering the blue plaid third layer Person A was wearing.

Respondent's Testimony

Respondent testified that once he recovered cocaine from Person A's socks, he was concerned about whether the "long johns or shorts" Person A had on underneath his pants contained any other contraband or a weapon (T. 31). He asked Person A "Do you have any pockets?" (T. 32)². When Respondent made that statement, he was aware that Person A was wearing three layers of clothing on his bottom half; he was unaware of what the second layer was (T. 34, 49).

² CCRB's Exhibit 1 shows that Respondent told Person A "Let me see if you have pockets in your shorts . . . Long johns?" (CCRB Ex. 1 at 22:18-22:20).

According to Respondent, he then said, "Pants," which referred to "the outer layer to make sure that there wasn't [sic] any pockets there or any other contraband or anything that could be hidden underneath the long johns that I couldn't feel from the jeans" (T. 32).

Respondent testified that Person A then lowered his jeans and his long johns, stating, "... I didn't tell him to. He did it of his own free will" (*Id.*). Respondent then told Person A to "pull them back up" and denied ever directing Person A to pull down his long johns (*Id.*).

On cross-examination, Respondent acknowledged that according to the Patrol Guide, a strip search is any search where an individual's underwear is exposed; he denied directing Person A to reveal his underwear and testified that Person A did so "on his own free will" (T. 36-37). He further acknowledged that a strip search that followed the Patrol Guide required prior authorization from his sergeant before taking a suspect into a bathroom (T. 37-38, 42). Respondent conceded that he did not seek approval from a supervisor before conducting the procedure in the holding cell area (T. 43). He also conceded that the search he conducted was performed in the view of other detainees in the holding cell area (T. 43-44).

Person A's Statement

In his hearsay statement, Person A asserted that Respondent made him "take off my bulletproof vest and starts to undress me in front of the [other] prisoners. He doesn't take me to a bathroom to undress me. He puts me right in front of the prisoners and makes me undress. While I was undressing, a bag of marihuana fell out of my sleeve. Then he goes, take off your socks halfway. I take off my sock halfway and take off the other sock halfway, nothing. And he says, take them off all the way. This is in front of the prisoners. He doesn't take me -- this is all right there in front of the prisoners, doesn't take me in a bathroom. And then he makes me take

my pants, a little bit down halfway off, and that's when everything unfolded from there" (CCRB Ex. 2A at 4-5).

After he acknowledged that Respondent recovered cocaine from one of his socks, Person A claimed Respondent "then told me to take down my pants halfway," then told him, "slightly pull them up" (*Id.* at 7). When the investigator asked Person A whether it was his underwear he was slightly pulling down, Person A responded, "Slightly, slightly, but then he told me to stop" (*Id.* at 7-8). The investigator asked Person A "So how far did you go down? Person A answered, "Just, just like a little bit off my waist. A little bit off my waist, slightly off my waist" (*Id.* at 8).

When the investigator asked Person A what sort of direction Respondent gave about his underwear, Person A responded, "When, when I took my pants halfway, he said, alright, pull – then I had on my thermals under. He said, pull those. I pulled those. He said, cool. Then I had on my boxers, and I wanted to pull those slightly, and he said, no, that's it, stop and go up. Don't do that no more" (*Id.* at 33). Person A denied that Respondent patted him down when his pants and long johns had been lowered, stating, "No, he didn't, he didn't violate my area. No" (*Id.* at 34).

Credibility

Based upon the totality of the record, Respondent's testimony was logical and forthright and corroborated by the video from his Body-Worn Camera. His concession to being knowledgeable about the basis for a permissible strip search and the manner of obtaining the authorization to perform one is a factor weighing in favor of his veracity. Having had the opportunity to observe his demeanor as he testified during the hearing, I find the substance of his testimony and the manner in which it was delivered consistent with a desire to be candid with the Tribunal. Finally, although he is an interested witness in this proceeding, any concern about the

possibility of tailoring his testimony was alleviated by the corroboration of the factual assertions he made under oath by the Body-Worn Camera recording of his interaction with Person A

In contrast, Person A is an unreliable narrator of the events of December 31, 2018, as they pertain to an alleged strip search. First, several factual assertions he made about statements Respondent purportedly made during their interaction were not supported by the video recording of the event. Second, the directives he attributed to Respondent, to lower his pants “halfway” and then to, “slightly pull them up,” seem calculated to portray Respondent in a position of compelling Person A to comply, while simultaneously equivocating over his characterization of the compulsory nature of Respondent’s purported commands. Third, Person A’s accusation focused almost immediately on the public nature of the purported strip search, suggesting the prospect of being stripped in public may have been a significant factor motivating his complaint, to the point that he leveled an accusation of a strip search that never came to pass. In his own words, he denied that Respondent had “violated his ‘area.’”

Finally, the bulk of Person A’s statement concerned his unsubstantiated accusations that Respondent had stopped him without cause, had engaged in a pattern of harassment, and was unjustifiably attempting to charge Person A with felonies. These accusations are more accurately characterized as recriminations, given that Respondent’s discovery that Person A possessed marihuana and cocaine led to him being criminally charged. This is clear evidence of bias on his part, further undermining his veracity.

Based upon the foregoing, I find that Person A’s claims regarding Respondent’s professed misconduct are dubious.

Specification 1: Strip Search without Sufficient Legal Authority.

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent performed a strip search without sufficient legal authority.

Patrol Guide procedure 208-05(C)(1) states:

“A strip search is any search in which an individual’s undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual’s clothing is removed, lifted up, or pulled down to expose undergarments or private areas.” Strip searches “may only be conducted with the knowledge and approval of the arresting officer’s immediate supervisor or the borough Court Section supervisor.”

It is not in dispute that Respondent did not seek authorization from a supervisor to search Person A before he brought him to the holding cell area or that there were other detainees present in that area who were in a position to witness Person A being searched. Nevertheless, I find that no search meeting the definition of “strip search” found in Patrol Guide procedure 208-05(C)(1) was performed.

Respondent testified credibly that he was aware of the procedures for conducting a strip search and the authorization he would need before conducting one. His denial that he conducted a strip search is supported by his Body-Worn Camera recording, which is the best evidence of the procedure he performed.

The credible, relevant evidence supports a finding that when Respondent told Person A “Let me see if you have pockets in your shorts,” Person A took down his jeans, exposing his long johns and a pair of boxer shorts he had on underneath the long johns. I do not find that Respondent’s statement was equivalent to a directive to Person A to expose his underwear, nor would it have been reasonable for Person A to interpret it that way. A review of the video evidence and Respondent’s credible testimony supports a finding that Person A lowered his jeans and long johns on his own volition. Person A’s claims that Respondent directed him to “take [his] pants down halfway” and to,

“slightly pull them up” were contradicted by the video evidence of the interaction and are incredible.

In previous cases, this Tribunal has declined to find misconduct where suspects have been found to expose their underwear on their own initiative rather than at the direction of respondents (*Disciplinary Case Nos.* 2020-21892, 2020-21893, 2020-21894 [May 26, 2023]).

Based upon the foregoing, I find Respondent Not Guilty of Specification 1.

Specification 2: Strip Search Without Police Necessity

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent performed a strip search without police necessity.

As outlined in the analysis of Specification 1 above, I have found that Respondent did not perform a strip search of Person A in violation of Patrol Guide procedure 208-05(C)(1). With respect to the search which was performed, Patrol Guide procedure 208-05(B)(2) is instructive:

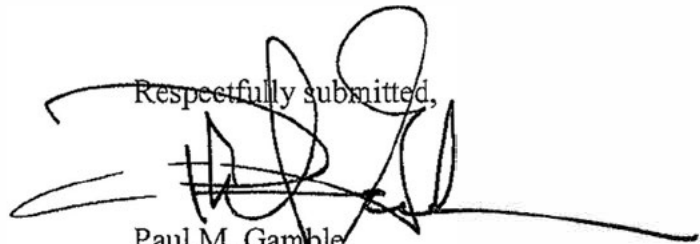
“A search at a police facility, which is not the same as a ‘strip search,’ includes the removal of outer garments (e.g., overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoelaces, drawstrings, shoes, socks, handbags, wallets, etc.). All pockets are to be emptied, and all clothing not removed will be examined by grabbing, crushing, and squeezing the garments and by sliding the hands across the body to detect articles that may be underneath or sewn to the clothing.”

Persons detained in holding cells are in the care of this Department; as such, Members of Service owe them a duty to provide for their safety and well-being. As part of that responsibility, it is imperative that Members of the Service ensure that detainees do not bring any potentially dangerous items into a holding cell that can harm themselves, other detainees, or police officers. The dangers of weapons or controlled substances in a holding facility are manifest.

Based upon the credible evidence in the record, Respondent performed a search of Person A's clothing and person, which comported with the letter of Patrol Guide procedure 208-05(B)(2). Providentially, Respondent's search discovered a quantity of marihuana and seven pieces of crack cocaine on Person A's person before he was placed into a holding cell.

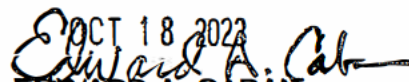
Based upon the foregoing, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', written over the typed name.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

OCT 18 2023

EDWARD A. CABAN
POLICE COMMISSIONER