



POLICE DEPARTMENT

November 1, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-26440
Police Officer Ronald Chiriboga	:	
Tax Registry No. 955814	:	
79 Precinct	:	

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Nicole Jardim, 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 KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Ronald Chiriboga, on or about January 29, 2021, at approximately 2116, while assigned to 079 PCT and on duty, in the vicinity of Park Avenue and Bedford Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked [Person A] without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 36

INVESTIGATIVE ENCOUNTERS

2. Police Officer Ronald Chiriboga, on or about January 29, 2021, at approximately 2116, while assigned to 079 PCT and on duty, in the vicinity of Park Avenue and Bedford Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he searched [Person A] without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE ENCOUNTERS

3. Police Officer Ronald Chiriboga, on or about January 29, 2021, at approximately 2116, while assigned to 079 PCT and on duty, inside the 79th Precinct Stationhouse, Kings 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

4. Police Officer Ronald Chiriboga, on or about January 29, 2021, at approximately 2116, while assigned to 079 PCT and on duty, in the vicinity of the 79th Precinct Stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he searched the vehicle in which [Person A] was an occupant, without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE ENCOUNTERS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 22, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called [Person A] as a witness, and introduced into evidence Body Worn Camera footage of the incident. 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 reviewed all of the evidence in this matter, I find as follows:

Specification 1 (frisk): Guilty

Specification 2 (search of person): Guilty

Specification 3 (strip search): Not Guilty

Specification 4 (search of vehicle): Not Guilty.

Recommended penalty: three (3) vacation days.

ANALYSIS

This case involves a car stop that occurred at approximately 2043 hours on January 29, 2021, in the vicinity of Park Avenue and Bedford Avenue in Kings County. Respondent and his partner pulled over a black SUV because there was no license plate visible. Upon closer inspection, Respondent observed, through the vehicle's tinted windows, a temporary plate affixed to the inside of the rear window. Respondent approached the driver of the SUV, Person A and asked for his license and registration. It is alleged that during the ensuing encounter, Respondent improperly frisked and searched Person A. Respondent also is charged with conducting an improper strip search of Person A inside the precinct, and of wrongfully searching the SUV.

Person A testified that when Respondent asked for permission to remove the temporary plate for further inspection, Person A told him that he preferred to remove the plate himself so it would not tear. With Respondent's permission he exited his SUV. Respondent then patted down Person A and searched inside his pockets, before allowing Person A to peel off the plate from inside the rear window. Person A handed the temporary plate, which was from Texas, to Respondent. At Respondent's direction, Person A remained standing, uncuffed, outside the SUV while the officers did additional checks on the plate. About six-to-eight minutes later, the officers stated that they were unable to verify the plate, and Person A was placed under arrest.

He was searched a second time, placed inside the police car, and transported to the precinct. (Tr. 36-38, 43-44, 56)

At the stationhouse, Person A was again searched at the front desk, then brought to the cell area. Person A testified that in a bathroom adjoining the cell, Respondent had him lower his pants to his knees in order to make sure there were no pockets in his long johns, which Person A was wearing underneath his pants but over his boxers. According to Person A, Respondent briefly slid his hands along his waistband, and the back of Respondent's hand grazed his testicles. Respondent never asked Person A to lower his long johns. (Tr. 39-40, 46, 48-49, 69-75)

Approximately three hours later, Person A was told that the SUV was released to his sister, who was the owner of the vehicle. Person A though, was arrested for possession of a knife, which was recovered from inside the SUV. Person A testified that before he saw the arraignments judge, he was released from custody and told that they were declining prosecution. (Tr. 40-41)

Respondent testified that he explained to Person A that the temporary plate was not affixed in the correct place, and that the officers needed to verify the plate. After obtaining the tag number, as well as Person A's license and registration, he and his partner returned to their vehicle. Respondent confirmed that Person A's license was valid, and learned that Person A's arrest history included recent charges for a possession of a forged instrument, as well as for weapons possession; there was no indication of any convictions. Meanwhile, Respondent's partner ran several checks on the plate with her Department phone. The plate number did not come back as assigned to any particular vehicle, which suggested to Respondent that it was a fraudulent plate. (Tr. 82-86, 117-20)

Respondent testified that he believed he had probable cause to arrest Person A at that point, but he chose to investigate further. He agreed to have Person A exit his SUV in order to remove the temporary plate from the window. Although he did not observe any suspicious bulges on Person A Respondent frisked and searched him for weapons. Respondent did not place Person A in handcuffs; instead, he allowed Person A to remove the plate, and then had him stand by the rear of the vehicle. Respondent, who was “still figuring out” the validity of the plate, told Person A that if the plate came back as valid, Person A would be sent on his way. Respondent stepped away with the temporary plate and attempted to scan it with the help of a more experienced police officer who had arrived on the scene, but again the number did not match any vehicle. (Tr. 86-91, 121-28, 140)

The more experienced officer then called back to the stationhouse to have additional checks done on the license plate using a Department computer. Again, those checks produced no match to any vehicle. At this point, Respondent decided to have Person A placed in handcuffs. Respondent testified that he called his supervising sergeant to get authorization for the arrest, and again frisked and searched Person A before placing him inside the police vehicle. Person A was transported to the precinct, as was the SUV. (Tr. 92-94, 129, 143)

Inside the stationhouse, Respondent brought Person A to the bathroom in the holding cell area in order make sure that the prisoner did not have anything that could be used to harm himself or others. He had Person A lift his shirt in order to check his waist, then asked Person A to lower his pants enough for Respondent to see whether there were any pockets or strings on the long johns. As Person A lowered his pants, Respondent told him “that’s enough,” visually inspected the long johns, and had Person A pull his pants back up. Respondent testified that he did not touch Person A’s testicles, and Person A’s boxers and privates were not exposed.

Respondent did not consider the long johns to be an “undergarment” since Person A was wearing boxers underneath, and he maintained that his actions did not constitute a strip search. (Tr. 95-102, 133-36, 141)

After Person A was secured in the holding cell, Respondent went to do an inventory search of the SUV, which he conducted with his Body-Worn Camera (“BWC”) activated. Respondent recovered an illegal knife from the driver’s side door panel. As Respondent began to do the paperwork for the arrest, he ran the plate one more time, and the SUV came back as registered in the name of Person A’s sister. Rather than taking the time to itemize and voucher all of the items he observed inside the SUV, which was “almost filled to the brim with stuff,” Respondent chose to release the vehicle to the sister, who had an appointment to take her two small children to the doctor. Person A remained in custody, charged with criminal possession of a weapon for the knife that was recovered from inside the SUV; the DA’s Office declined to prosecute the case. (Tr. 102-11, 137-38)

BWC footage from officers at the scene and inside the precinct were admitted into evidence. (CCRB Exs. 1-5) In the footage at the scene from Respondent’s camera (CCRB Ex. 3), Person A can be seen stepping out of the SUV at the 1417 mark, at which point Respondent tells him that he needs to make sure he has no weapons on him. Respondent proceeds to pat him down and search him for weapons. Person A then walks to the rear of the SUV, removes the temporary plate from the window, and hands it to Respondent, who has Person A stand near the rear of the vehicle while he checks on the plate.

In the footage of the alleged strip search (CCRB Ex. 1), Respondent asks Person A to take off his jacket at 49:42. Respondent lifts Person A’s shirt and appears to check his waist area. He then tells Person A that he needs to make sure his long johns do not have any pockets.

Respondent instructs Person A not to pull everything down, but has him lower his pants just enough to see that the long johns have no pockets.

Specification 1 alleges that Respondent frisked Person A without sufficient legal authority, while Specification 2 charges him with a wrongful search of Person A's person. Section 212-11 of the Patrol Guide states that a frisk is authorized during an encounter when an officer reasonably suspects that the individual is armed and dangerous. When the frisk reveals an object that the officer reasonably suspects may be a weapon, he may search the interior portions of the individual's clothing to remove the weapon.

Person A testified convincingly about what transpired at the scene of the stop, as did Respondent; their accounts were essentially consistent with one another, as well as with the BWC footage. At issue is the propriety of the frisk and search that Respondent initially conducted after Person A exited his vehicle. Counsel for Respondent argues that it was a search incident to a lawful arrest, while it is the position of the CCRB that Person A was not arrested at that point, and Respondent did not possess reasonable suspicion to conduct the frisk and search. For the reasons set forth below, I agree with the CCRB that this frisk and search were conducted by Respondent without sufficient legal authority.

After stopping Person A's vehicle, Respondent and his partner used their Department phones to run several checks on the SUV's temporary license plate; no vehicle came back as connected to that particular plate number. At trial, Respondent contended that Person A was effectively under arrest at that point, but Respondent's actions at the scene suggested otherwise. First, Respondent allowed Person A to exit his vehicle to assist with removing the temporary plate from the SUV. Respondent did not call his supervisor for arrest approval at this point, nor did he place Person A in handcuffs; rather, he conducted a pat down and search of Person A's

person, for the safety of the officers, and then they walked together to the rear of the SUV.

Person A opened the trunk and removed the temporary plate from the rear window, which he handed to Respondent. Respondent then had **Person A** stand at the rear of the SUV while the officers conducted additional checks on the plate. From this sequence of events, I conclude that Respondent was not satisfied with the results of his preliminary phone check on the plate, and wanted to investigate further by inspecting the plate itself. Indeed, Respondent, himself, told **Person A** that if the plate came up valid, “you’re gonna be on your way.” (*see* CCRB Ex. 3 at 20:46 mark).

Respondent had another police officer do a scan of the temporary plate, but that, too, did not produce a match of the plate number to a particular vehicle. Still not satisfied, Respondent continued his investigation by further consulting with a fellow officer who had arrived on the scene, and was more experienced in these matters. At that officer’s suggestion, they called the precinct and had them do another check on the license plate with a Department computer; that check also came up with no match to any vehicle. At this point, after multiple different checks had failed to authenticate the temporary plate, Respondent decided to place **Person A** under arrest. Respondent called his sergeant to get authorization, and placed **Person A** in handcuffs. He then conducted a frisk and search incident to the lawful arrest, before placing **Person A** inside a police vehicle and transporting him to the stationhouse.

Under these circumstances, the initial frisk and search of **Person A** which occurred at a point where he was not being placed under arrest, required a reasonable suspicion that the suspect was armed and dangerous. The facts here did not establish such reasonable suspicion. Respondent did not observe any weapons or suspicious bulges on **Person A**, nor did he have any information suggesting that **Person A** was armed and dangerous. Although a check on **Person A**’s

name did reveal that he had open cases, one of which was for possession of a weapon, that, without more, did not provide reasonable suspicion that Person A was armed at this moment.

This tribunal is mindful of the potential dangers to police officers inherent in any car stop. Nevertheless, in the absence of reasonable suspicion, Respondent did not have sufficient legal authority to frisk and search Person A at that point in time. Accordingly, I find Respondent guilty of Specifications 1 and 2.

Specification 3 charges Respondent with conducting a strip search of Person A without sufficient legal authority. The question here is not whether there was a sufficient basis to justify a strip search; rather, at issue is whether a strip search even occurred. Under the specific circumstances presented here, I find that the search that occurred inside the precinct bathroom was not a strip search.

Section 208-05 of the Patrol Guide defines a strip search as one “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.” Here, it is undisputed that Respondent had Person A lower his pants, at which point the prisoner’s long johns were briefly exposed while Respondent did a quick visual inspection. Respondent explained to Person A that before he lodged him in the cell, he needed to see if his long johns contained any pockets, which could conceal a weapon or other object that might be used to cause harm. Respondent was particularly concerned with making sure there were no strings that Person A could use to harm himself or anyone else.

In this situation, the long johns were *not* the under-most garment; Person A was wearing an undergarment beneath the long johns, namely a pair of boxers. At no point did Respondent have Person A lower his long johns. Under the case-specific facts presented here, the CCRB did

not meet its burden of proving, by a preponderance of the credible evidence, that Respondent conducted a strip search of Person A. Accordingly, I find him not guilty of Specification 3.

Specification 4 charges Respondent with conducting a search of Person A's vehicle without sufficient legal authority. Section 218-13 of the Patrol Guide states that when property comes into the custody of the Department, an inventory search will be conducted.

Counsel for the CCRB argues that since Respondent did not complete the appropriate paperwork, there is no way to know when and under what circumstances Respondent conducted his search. However, I credit Respondent's testimony that he conducted a proper inventory search once the SUV was brought to the precinct, a search that was captured by his BWC (CCRB Ex. 2). This was not a situation where Respondent improperly rushed to conduct an unauthorized search of the vehicle at the scene. Instead, he waited until they were back at the precinct, at which point he needed to do an inventory search of the SUV, which was in the Department's custody.

Respondent intended to complete the appropriate inventory paperwork, but decided instead to prioritize the release of the vehicle to Person A's sister, since she needed to take her young children to a doctor's appointment. Even if Respondent made an improper decision to release the vehicle before he had a chance to document the inventory search, that does not render the search, itself, wrongful. Since the SUV was in the custody of the Department, I find that it was, indeed, proper to search the vehicle. The record has failed to establish that Respondent lacked sufficient legal authority to search the SUV, and I find him not guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances,

including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. Respondent, who was appointed to the Department on January 8, 2014, previously forfeited 15 vacation days in connection with a 2018 incident where he failed to safeguard his firearm. He has been awarded 9 medals for Excellent Police Duty, and 11 for Meritorious Police Duty.

The CCRB recommended a total of 26 penalty days and dismissal probation to cover the four charges against Respondent. However, since Respondent has been found not guilty on two of the four counts, including the most serious charge, the penalty should be adjusted downward accordingly.

Respondent has been found guilty of frisking and searching Person A without sufficient legal authority, and there must be appropriate accountability. As discussed above, Person A was not under arrest at the time, and Respondent lacked reasonable suspicion to support the frisk and search. For this misconduct, the CCRB recommended the presumptive penalty of three (3) vacation days for each count, with those penalties to run concurrently with each other. On balance, I find that recommendation to be reasonable. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit a total of three (3) vacation days.

APPROVED

JUL 14 2023
Edward A. Caban
EDWARD A. CABAN
ACTING POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER RONALD CHIRIBOGA
TAX REGISTRY NO. 955814
DISCIPLINARY CASE NO. 2022-26440

Respondent was appointed to the Department on January 8, 2014. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2019, 2020 and 2021. He has been awarded 11 medals for Meritorious Police Duty and nine medals for Excellent Police Duty.

In 2020, Respondent forfeited 15 vacation days after pleading guilty to failing to properly secure and safeguard his firearm while off duty and out of state, and failing to timely notify the Department when the firearm improperly discharged.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials