



POLICE DEPARTMENT CITY OF NEW YORK

February 18, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Juan Rodriguez
Tax Registry No. 937408
19 Detective Squad
Disciplinary Case No. 2014-12197

Charges and Specifications:

1. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he stopped Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1 - STOP & FRISK
2. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he frisked Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 2 - STOP & FRISK
3. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty, in the vicinity of 120 West 82nd Street, New York County, abused his authority as a member of the New York City Police Department in that he searched Julio Mendoza without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 3 - STOP & FRISK
4. Said Police Officer Juan Rodriguez, on or about June 20, 2013, at approximately 1040 hours while assigned to the 20th Precinct and on duty in the vicinity of 120 West 82nd Street, New York County, did wrongfully use force against Julio Mendoza, in that he grabbed Mr. Mendoza and pulled him out of his vehicle.
P.G. 203-11, Page 1, Paragraph 2 - USE OF FORCE

Appearances:

For CCRB-APU: Raasheja Page, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

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

Hearing Dates:

November 17 and 24, 2015

Decision:

Guilty

Trial Commissioner:

DCT Rosemarie Maldonado

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 17 and 24, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Julio Mendoza, Leonid Trubman and Sergeant Michael Williams as witnesses. Respondent testified on his own behalf and entered the hearsay statement of Sergeant John O'Connor into evidence. 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 guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The instant matter arose when two New York City Department of Consumer Affairs investigators parked in an area designated for NYPD vehicles. The following facts are

undisputed. At approximately 1120 hours on June 20, 2013, Inspectors Julio Mendoza and Leonid Trubman arrived at 120 West 82nd Street in Manhattan to conduct an inspection at a drycleaner. (Tr. 16, 62-63) They had driven to that location in a black Prius owned by the City. Trubman was driving and Mendoza was in the passenger seat. They found a space in front of the drycleaner and parked.

That day Respondent was assigned to the day tour of the 20th Precinct Anti-Crime Unit. He arrived at the precinct, located on West 82nd Street, and had difficulty finding parking. He left his car in front of the precinct "poorly parked" so that he could sign in and change. (Tr. 119-20) When he returned, in plainclothes, to move his vehicle, he observed Trubman and Mendoza's Prius parked in a spot designated for police officers. (Tr. 122-23). Respondent pulled up to the Prius on the passenger side, pointed out the sign and informed Trubman and Mendoza that they were in a police parking area. (Tr. 62-63, 123) Trubman showed Respondent a Consumer Affairs plaque and moved the vehicle further up the block. (Tr. 63, 125)

Respondent remained in his vehicle for approximately twenty minutes, checking phone messages. (Tr. 153) During this period Trubman and Mendoza conducted the inspection and returned to the Prius to complete paperwork. Respondent asked Police Officer Michael Williams, who was in uniform, for his assistance and they approached the Prius. (Tr. 128) During their interaction, Mendoza exited the vehicle and was frisked and searched. (Tr. 91, 129, 156-59)

When Mendoza asked to speak to Respondent's supervisor, he was escorted to the precinct. (Tr. 23-25) He spoke with Sergeant John O'Connor and left without filing a formal complaint. (Respondent's Ex. ("RX" A). No summonses were issued. (Tr. 58) Mendoza later

called 311 and initiated a complaint against Respondent. Similarly, Respondent called 311 and initiated a complaint against Mendoza. (Tr. 29, 162-163)

At issue is whether Respondent engaged in misconduct by stopping, frisking, searching Mendoza and whether he used unauthorized force. For the reasons set forth below, I find that Respondent is guilty of the charged misconduct.

According to Mendoza, Respondent pulled up next to their vehicle and began "screaming" that their parking space was reserved for police officers. (Tr. 16) He contended Respondent did not identify himself but pointed out a sign for police parking on that street. Mendoza asserted that it was blocked by a tree and commented to Respondent that the tree should be trimmed. (Tr. 17-19)

According to Mendoza, it took about 20 minutes for them to park further up the block and conduct the inspection. Afterwards, he sat in the vehicle with Trubman to complete paperwork. They were in the car for "less than a minute" when Respondent banged on the car and demanded that he exit. (Tr. 20, 49) Respondent then "opened the door and grabbed my hand and pulled [him] out." He was then taken to the rear of the car, pushed against the trunk, frisked and searched. (Tr. 20-22, 54) At trial, Mendoza claimed that Respondent pulled his wallet from his right back pocket and began looking inside. Mendoza was carrying his metal Consumer Affairs shield in a leather case, as well as his wallet.¹ Mendoza denied threatening, cursing at or making any physical moves toward Respondent. (Tr. 28)

¹ On cross-examination, the APU prosecutor stipulated that a transcript of Mendoza's initial CCRB interview indicated that he told investigators his wallet and his metal shield were in his back pocket and agreed that the items created a noticeable bulge. (Tr. 33-34) The transcript was not entered into evidence but was read on the record to Mendoza. Mendoza did not recall being asked these questions or giving those answers. It was further stipulated that at the same interview, the transcript provides that Mendoza told investigators that he pulled his wallet from his own pocket. When confronted with this statement, Mendoza testified, "I guess I told them that." (Tr. 36)

Mendoza asked to see a supervisor and after several requests was escorted to the precinct. (Tr. 23-24) He recalled that the sergeant apologized and suggested it had been a misunderstanding. According to Mendoza, Respondent began screaming, "jumping and spitting," and he detected a "real strong smell" of alcohol on his breath. (Tr. 26, 57) When his wallet was returned to him, he noticed that \$50 was missing. He immediately informed the sergeant about the money and added that he believed Respondent was drunk. (Tr. 27-28)² On the advice of his Consumer Affairs supervisor, he later called 311 and made a complaint.

Mendoza's co-worker, Mr. Trubman, corroborated much of his account. He agreed that the police parking sign was blocked by a large tree and that Mendoza commented that the tree should be trimmed. They then quickly moved their car to a legal spot. (Tr. 63, 84) Trubman also confirmed that, after they completed the inspection at the drycleaner, the officers "yanked inspector Mendoza out of the car" and "got him leaning on the car with both of his hands on the trunk" (Tr. 65) When asked on cross-examination if he saw the officers physically remove Mendoza from the car, he acquiesced, "I didn't see . . . it happened very quickly. I saw the door open. Somebody grabbed him and he was out" (Tr. 72) He described Respondent as "very aggressive" and saw the officers go through Mendoza's pockets. Trubman recalled feeling "a little bit shocked because it was unprovoked." (Tr. 66, 69) However, unlike Mendoza, he testified that Respondent showed them a Department parking plaque and did not recall Respondent banging on the car. (Tr. 63, 71-72) Trubman tried to film the incident on his cell

² An interview with Sergeant O'Connor was entered into evidence. O'Connor told CCRB investigators that though Mendoza was disorderly when he came into the precinct, he calmed down and did not wish to make a formal complaint. O'Connor stated that he was not told anything about cursing, or a frisk and did not recall any allegations of intoxication or missing money. (RX A at 6-13).

phone but was told he would be arrested if he continued to do so. As a result, he was only able to snap one still photo. (Tr. 67; CCRB Ex. 1)

When they later met with the precinct supervisor, Trubman recounted that the sergeant suggested that they could “keep [the incident] between us,” as they were all City employees. (Tr. 70) He concurred with Mendoza that he smelled alcohol on Respondent’s breath. (Tr. 80)³

Respondent presented a markedly different account of how the incident escalated. He testified at trial that as soon as he first approached the vehicle to inform Trubman he was parked in a police spot, Mendoza became irate, directing curse words at him. Trubman, Respondent testified, was “no issue” and moved the vehicle, albeit into a spot near a fire hydrant.⁴ As they moved, Mendoza continued to curse and Respondent was “astonished” by his behavior. (Tr. 124-26)

Respondent pulled into the spot and remained in his vehicle for some time, checking messages on his phones. As he exited about ten to twenty minutes later, he looked at his mirror and noticed Mendoza waving his arms in the air, sticking his head out of the car, yelling, “fucking asshole, fucking cops.” (Tr. 126-27) Believing that Mendoza might be an EDP, or that the Consumer Affairs plaque might be phony, Respondent flagged down Williams, who was in uniform, to “take a walk with him.” (Tr. 127-28) Respondent explained that he thought having a uniformed officer might help because “maybe [Mendoza] misunderstood me.” (Tr. 128)

Respondent recounted that Mendoza was alone in the vehicle, still cursing at him, as he and Williams approached. He recalled, “I walk over to him, and I go, sir is there a problem? He is still cursing . . . And I am like completely shocked. . . I said to myself maybe he doesn’t

³ A fitness for duty report, prepared by Respondent’s Commanding Officer, Inspector Brian McGinn, provided that Respondent was observed on the date in question and was found to be fit for duty. (RX C)

⁴ Respondent agreed that no summons was issued for illegal parking. (Tr. 157)

understand. Maybe it will be better if I explain it to him outside of the car." (Tr. 129) He asked Mendoza to step out and Mendoza opened the door. Respondent put his hand on the door for safety and "escort[ed]" Mendoza to the rear of the vehicle, placing his hand on his arm. He claimed that no force was used and Mendoza walked "on his own free will and accord." (Tr. 129-30, 156)

Because Mendoza was lunging, spitting and yelling, Respondent explained that he feared for his safety. However, he told Williams not to handcuff him as he was only trying to conduct an investigation. (Tr. 130-31) Respondent acquiesced that though Mendoza was acting aggressively, he made no verbal threats of violence or attempts to physically attack Respondent. (Tr. 158-60)

Respondent further stated that he saw "things . . . like bulges" in Mendoza's pockets and conducted a pat-down and a search. He frisked the waistband and pocket areas and felt something "hard [like] metal." He asked Mendoza to take it out of his pocket. Mendoza complied and handed Respondent a wallet containing a metal Consumer Affairs shield. (Tr. 131-32, 159)

At this point, Respondent recalled that Trubman tried to inquire about what was happening. (Tr. 133-34) He testified that Mendoza was encouraging Trubman to record the incident and was trying to get the attention of passersby. Respondent testified he had "never had a situation like this ever with somebody" and he asked Mendoza, "What is your problem?" Mendoza then said he wanted to speak to Respondent's supervisor. Respondent retorted that he wanted to speak to Mendoza's Consumer Affairs supervisor. (Tr. 135)

They then walked to the precinct, where Respondent stood with Sergeant O'Connor while he spoke with Mendoza and Trubman. At one point, Respondent recalled interjecting that

Mendoza might be drunk and Mendoza then alleged that Respondent was drunk. The situation ended, according to Respondent, when Mendoza stated that he was missing fifty dollars and went to look for it outside. (Tr. 138-39) He did not return to the precinct. After Mendoza had filed a complaint against him, Respondent called 311 and filed a complaint against Mendoza. (Tr. 142, 163)

Summarizing the incident, Respondent stated, "I wanted to find out who he was, his identification, and I also wanted for my safety. He was acting aggressive . . . lunging towards me, flailing his arms . . . cursing at me, creating . . . a possible violent situation. I wanted to find out if he had any weapons on him . . . I would rather be safe than sorry . . . I was like doing an investigation. Maybe possible weapon, possibly a forged instrument, disorderly conduct. . . I was just trying to conduct an investigation . . . Once I discovered what his credentials are . . . I tried to give him . . . a professional courtesy as a City employee, I said to myself . . . maybe this is a misunderstanding" (Tr. 143-45) He further explained that Anti-Crime police officers are "proactive" and "don't walk away from situations" where they believe there is a possible crime. (Tr. 166) He stated that he was "not really" upset during the course of the incident and remained "very calm." (Tr. 161)

Additional testimony was provided by Sergeant Michael Williams. Williams recalled that Respondent did not elaborate on why he needed assistance but stated that he had "no problem" backing up another officer. He agreed Respondent did not bang on the Prius as they approached. (Tr. 98) He did testify, however, that Respondent, not Mendoza, opened the Prius door and that Respondent "grabbed the gentleman by the arm and took him out of the vehicle." On cross-examination, Williams explained that Respondent did not drag Mendoza from the vehicle and that Mendoza did not resist. (Tr. 99) When he saw Respondent remove Mendoza out

of the vehicle, he believed they were about to effectuate an arrest until Respondent told him to put his handcuffs away. (Tr. 91)

Once Mendoza was out of the vehicle, Williams stated that he and Respondent had a "heated argument." He did not recall the substance of what was said but stated that Mendoza was more agitated than Respondent. (Tr. 92) He recalled that Trubman tried to "add his two cents" and got close to the officers. Williams instructed him to stay back and warned him that he could be arrested for disobeying a lawful order. (Tr. 93)

Williams could not recall whether Mendoza handed his wallet to Respondent or whether Respondent removed it from his person. (Tr. 94-95) Williams confirmed, however, that he did observe Respondent frisking Mendoza and removing ID from his wallet. (Tr. 94) He stated that he did not witness anything that he believed could be a weapon and was not in fear for his safety at any point during the encounter. (Tr. 94-95)

At issue is whether Respondent was authorized to stop, frisk and search Mendoza and whether he used force wrongfully. Whether Respondent was justified in elevating the level of this encounter turns on a thorough consideration of all relevant facts. A tribunal must be particularly careful to assess the factual circumstances known by the police officer at the time. *People v. Medina*, 107 A.D.2d 302 (2nd Dept. 1985)

Police action beyond a request for information requires an elevated level of suspicion regarding criminal activity. Patrol Guide Procedure 212-11 addresses the criteria for conducting a Level 3 stop: When a uniformed member of service reasonably suspects a person has "committed, is committing or is about to commit a felony or a Penal Law misdemeanor," that officer may "stop [the] person and request identification and explanation of conduct." *See also People v. DeBour*, 40 NY2d 210 (1976) Reasonable suspicion has been defined as "the quantum

of knowledge sufficient to induce an ordinarily prudent and cautious [officer] under the circumstances to believe criminal activity is at hand." *People v. Cantor*, 36 N.Y.2d 106, 112-113 (1975); see also P.G. 212-11, p.2. As articulated by the courts, reasonable suspicion "may not rest on equivocal or innocuous behavior that is susceptible of an innocent as well as a culpable interpretation." *People v. Brannon*, 16 N.Y.3d 596 (2011), citing *People v. Carrasquillo*, 54 N.Y.2d 248 (1981).

After closely observing Respondent at trial, and reviewing the record as a whole, this tribunal is convinced that much of his testimony concerning the stop, frisk, search and use of force was not worthy of belief. Specifically, I did not credit Respondent's account that Mendoza acted in a manner justifying this elevated level of police action. I do not doubt that Mendoza expressed displeasure over Respondent's directive to move the Prius. In fact, at trial Mendoza still seemed annoyed about the encounter. His described conduct, however, did not provide a reasonable basis to suspect criminal activity. More significantly, much of Respondent's statement that he thought the Consumer Affairs parking plaque was a forged instrument had the markings of an after-thought tailored to bolster his defense. Within this context, Respondent's decision to stop Mendoza was not consistent with permissible factors described in the Patrol Guide.

This tribunal also finds that Respondent "wrongfully used force against Mendoza by grabbing him and pulling him out of his vehicle." Although Respondent acknowledged placing his hand on Mendoza "for safety reasons," he maintained that Mendoza himself opened the car door and "got out on his own free will and accord." (Tr. 130, 144) Other witnesses, however, credibly discredited this account by testifying that Respondent did, in fact, forcibly remove Mendoza from the vehicle. Mendoza recounted that Respondent opened the Prius door, grabbed

his right wrist and “pulled [him] out” of the vehicle. (Tr. 21) I found that his statement as to the type of force used was credible and devoid of undue exaggeration or embellishment. For example, when asked if he sustained injuries, he readily admitted that he had not. (Tr. 58) Moreover, Mendoza’s testimony was corroborated by that of Trubman, a very credible witness who asserted that Respondent “yanked” Mendoza out of the vehicle. Though Trubman did concede that this happened very quickly, he remained consistent in his position that Mendoza was “grabbed” and taken out of the vehicle. (Tr. 71-72) Officer Williams also testified that Respondent opened the door and “grabbed the gentleman by the arm and took him out of the vehicle.” (Tr. 90) Based on the credible testimony of three witnesses, I find that Respondent did grab Mendoza and pull him from the vehicle.

Having made this finding, the inquiry turns to whether Respondent had any justification to forcibly remove Mendoza from the vehicle. I find that he did not.

All uniformed members of the service are “responsible and accountable for the proper use of force under appropriate circumstances” and should use only “minimum necessary force.” Patrol Guide Procedure 203-11. The tribunal is unpersuaded that the use of any force was necessary here. As outlined above, there was no reasonable suspicion that Mendoza had committed or was committing a crime or that Respondent’s safety was threatened. In fact, Respondent acquiesced that Mendoza did not verbally threaten force nor make any actual attempts to physically attack him. (Tr. 160) Within this context, Respondent’s claim that Mendoza was “belligerent” was insufficient. In fact, Officer Williams confirmed that although Mendoza was agitated he was not in fear for his safety at any point during the encounter. (Tr. 94-95) In sum, the credible evidence failed to establish reasonable circumstances that would justify Respondent placing his hands on Mendoza and removing him from a vehicle.

The incident did not end here. Respondent admitted that he frisked Mendoza. “Absent reasonable suspicion of involvement in a crime, there [is] no basis to stop and detain appellant and, thus, no basis for even considering conducting a frisk.” *Matter of Darryl C.*, 98 A.D.3d 69, 74 (1st Dep’t 2012), *citing DeBour*, 40 N.Y.2d at 223. Inasmuch as Respondent had insufficient legal authority to stop Mendoza, it follows that he had no authority to conduct a frisk subsequent to the unlawful stop.

It is also important to note that Respondent was mistaken in believing that a bulge in Mendoza’s back pocket immediately created the reasonable suspicion required for a frisk as set forth in Patrol Guide provision 212-11. Articulable factors about the bulge’s size, shape, and placement must “justify the conclusion—that is, the reasonable suspicion—that the bulge is a weapon.” *See United States v. Jackson*, 2015 U.S. Dist. LEXIS 98980 (S.D.N.Y. July 29, 2015). Although Respondent articulated that the wallet was larger than the one displayed in court by Mendoza, this was insufficient within this context to justify further action. The “mere observation of an undefinable bulge in a person’s pocket is insufficient as a basis for a frisk or search.” *People v. Howard*, 147 A.D.2d 177, 181 (1st Dep’t. 1989).

As the stop and frisk were unlawful, the subsequent search of Mendoza was also without sufficient legal authority. The tribunal acknowledges that Mendoza initially told CCRB investigators that he had pulled out his own wallet but altered that narrative at trial, testifying that Respondent went inside his pockets and “dump[ed]” them. However, Respondent, after being expressly asked by counsel on cross-examination, whether he “searched Mendoza or not” answered affirmatively, confirming that a search did take place. (Tr. 159) Thus, Respondent conducted an unauthorized search.

In making these findings I note that it is troubling that Respondent seemingly targeted Mendoza because he balked at being asked to move his parked vehicle. Improper police action is punishable if an officer acted "with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper." *McGinle v. Town of Greenburgh*, 48 N.Y.2d 949, 951, 425 N.Y.S.2d 61, 62 (1979); *Police Department v. Dowd*, OATH Index No. 1189/90 (Oct. 5, 1990), *aff'd in part and rev'd in part on other grounds*, Comm'r Decision (Nov. 20, 1990). Here, the preponderance of credible evidence shows that Respondent acted punitively and in bad faith when he gratuitously stopped Mendoza, grabbed him and forced him out of the car. Accordingly, I find that the preponderance of the credible evidence supports a finding that Respondent engaged in the misconduct set forth in Specifications 1, 2, 3 and 4.

PENALTY RECOMMENDATIONS

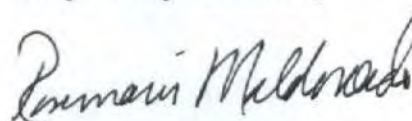
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Administrative Prosecutor seeks a penalty of eight vacation days. Taking into account the circumstances of this matter, the gratuitous nature of the conduct as well as the fact that Respondent was the subject of charges and specifications to which he pled Guilty in 2012, ten (10) vacation days is a more appropriate penalty to address the misconduct at hand.

This penalty is also consistent with recent Department precedent in similar matters. Recently, a sixteen-year detective forfeited twelve vacation days for unlawfully stopping one

individual; unlawfully frisking two individuals, pushing and punching one of the individuals. *Disciplinary Case No. 2014-11925* (November 20, 2015). Similarly in *Disciplinary Case No. 2014-11562* (September 23, 2015), a five-year police officer forfeited fifteen (15) vacation days for unlawfully frisking individual and pushing his head into a fence, causing injury. The instant matter can be distinguished as the force used was more moderate and did not result in any injuries to the complainant. As such, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

MAR 02 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JUAN RODRIGUEZ
TAX REGISTRY NO. 937408
DISCIPLINARY CASE NO. 2014-12197

Respondent was appointed to the Department on January 10, 2005. His last three evaluations were 4.0 overall ratings of "Highly Competent" in 2014 and 2015. He has six medals for Excellent Police Duty and one medal for Meritorious Police Duty.

In 2012, Respondent pled guilty to failing to properly safeguard his firearm and failing to vouch for the identification of an individual who he had arrested. He received a penalty of twenty vacation days.

For your consideration.

Rosemarie Maldonado
Deputy Commissioner Trials