



POLICE DEPARTMENT

October 28, 2014

MEMORANDUM FOR: Police Commissioner

Re: Detective David Cowan
Tax Registry No. 923710
Criminal Intelligence Section
Disciplinary Case No. 2013-9868

Detective Joel Polichron
Tax Registry No. 933192
Narcotics Borough Brooklyn North
Disciplinary Case No. 2013-9869

The above-named members of the Department appeared before me on March 6, 2014, charged with the following:

Disciplinary Case No. 2013-9868

1. Said Detective David Cowan, on or about March 11, 2012, at approximately 1756 hours, while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department in that he stopped Ian Gumbs without sufficient legal authority.

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

2. Said Detective David Cowan, on or about March 11, 2012, at approximately 1756 hours, while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department in that he frisked Ian Gumbs without sufficient legal authority.

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

3. Said Detective David Cowan, on or about March 11, 2012, at approximately 1756 hours, while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity [REDACTED], abused his authority as a member of the New York City Police Department in that he searched Ian Gumbs without sufficient legal authority.

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

Disciplinary Case No. 2013-9869

1. Said Detective Joel Polichron, on or about March 11, 2012, at approximately 1756 hours, while assigned to Narcotics Borough Brooklyn North and on duty, in the vicinity [REDACTED], abused his authority as a member of the New York City Police Department in that he stopped Stacey Thomas without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Remi Simoes, Esq. Respondents were represented by Michael Lacondi and James Moschella, Esqs.

Respondents, through their 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

Disciplinary Case No. 2013-9868

Respondent Cowan is found Not Guilty.

Disciplinary Case No. 2013-9869

Respondent Polichron is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

CCRB's Case

CCRB called Ian Gumbs and Stacey Thomas as witnesses.

Ian Gumbs

Gumbs has been employed by the Department of Education for 20 years. His responsibilities include assisting teachers and students, kitchen duty, and office work. On March 11, 2012, he drove his friend, Stacy Thomas, to a birthday party at his godsister Person A's apartment in Brooklyn. Because the front gate to the building was locked, he drove to the back of the building and parked across the street from the parking lot. He and Thomas walked toward the building and, when the parking lot entry gate was raised for a car to pass, they followed the car through the gate. Once in the parking lot, they had to pass through a second gate to get into the building. Gumbs explained what happened as they proceeded toward the building: "Before we got to the apartment, we noticed two other people coming from a side gate. We heard about the gate but we never been down there. So we did proceed to go there. We stood there at least maybe three, four seconds the max because it wasn't open. So we did what we always go, to the gate which is in the middle the parking lot." CCRB's Exhibit (CCRBX) 1 is a photograph of the parking lot at [REDACTED]. Thomas testified that while he walked toward the lot he had his car keys in his hand but then put the keys in his pocket. CCRBX 2 is a photograph of the side gate through which Gumbs and Thomas initially attempted to enter the building, and CCRBX 3 is a photograph of the central gate they usually used.

While Gumbs and Thomas were walking in the parking lot toward the central gate, a van stopped in front of them and two men jumped out. The men, subsequently identified as Respondents, pulled out their shields and told them they were trespassing. Respondents also told them, "You know a lot of things going on around here, shootings." Gumbs told Respondents that he was there to visit his godsister. Person A, who was standing at her window observing the encounter, screamed out the window, "They my family." The van driver, Respondent Cowan, proceeded to pat Gumbs down and ask him if he had ever gotten in trouble. Gumbs informed Respondent Cowan that he had not been in trouble in years. Respondent Cowan touched Gumbs's clothes and asked him for identification. Gumbs produced identification. Respondent Cowan then handcuffed Gumbs and started checking his hat, clothes, and vest. Respondent Cowan put his hands in Gumbs's pants pockets. Respondent Cowan then picked up from the ground a clear bag containing a green substance. Respondent Cowan asked Gumbs if the bag belonged to him. Gumbs replied negatively, but Respondent Cowan informed Gumbs that he was under arrest. Gumbs told Respondent Cowan that he worked for the City and that he would get in trouble at work if he was arrested. Respondents told him at that point to "shut the fuck up."

Thomas was on the other side of the van, but Gumbs could see that Respondent Polichron searched her pocketbook. Gumbs asked if he could give his wallet and personal belongings to Thomas to hold while he was in custody. Respondents handcuffed Gumbs and placed him in a van, where he sat for at least six hours while the officers "pick[ed] up other people." At the station house, Gumbs was given a Desk Appearance Ticket (DAT). Gumbs described Respondents' demeanor that day, "They

was very rude, very rude to me. Nobody got rough with me, nobody grabbed me. But they was very rude." [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] cross-examination, Gumbs testified that the parking lot entry gate at the back of the building was in the open position most of the time. There were no signs indicating that pedestrians were not supposed to use that entrance. There was an intercom system for visitors to call building residents, but the system was broken. Immediately after getting out of the van, Respondent Cowan frisked Gumbs and asked him if he had anything illegal. After handcuffing Gumbs, Respondent Cowan started patting him down, starting at the head and making his way down to the ground. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thomas testified that when she and Gumbs drove to the building for the birthday party, the front entrance was closed. There was no intercom system for visitors to call directly to the apartments, so Thomas called Person A on the phone. Person A advised them to drive around to the back of the building. Gumbs drove around the corner to the back and parked across the street. Gumbs and Thomas walked toward the building and, when the rear parking lot entry gate was raised for a car to pass, they followed the car

through the gate. Gumbs and Thomas held hands while they walked. They saw a couple of people using a side entrance to the building, so they walked in that direction. Because the side entrance turned out to be locked, however, they proceeded toward another entrance. It was at that point that the van stopped in front of them and Respondents got out. Respondents were wearing regular street clothes, and the manner in which they stopped their van and jumped out made Thomas believe that they were going to rob her.

Respondent Cowan told Gumbs and Thomas that they were trespassing and that “there’s a lot of activity and stuff going back there.” Gumbs and Thomas explained to the officers that they were there for a party, and Person A could be seen standing at her window. Respondent Cowan took Gumbs near the van, asked him if he had been arrested before, and proceeded to pat him down. Meanwhile, Respondent Polichron took Thomas to the opposite side of the van and asked her if she had anything on her. Thomas told Respondent Polichron that she did not have anything, and he asked if he could search her bag. She opened the bag and placed it on top of the van. Respondent Polichron proceeded to go through the bag. According to Thomas, Respondent Polichron both “checked [her] bag” and “checked [her].” Respondent Polichron also asked Thomas for identification. Thomas produced her Medicaid card that had a photograph on it and a telephone bill with her address on it. Thomas did not feel free to leave while she was speaking with Respondent Polichron. She explained, “I couldn’t leave because they were still talking to Mr. Gumbs and he told me not to move, I had to stay there until they finished.”

From her location, Thomas was able to see Respondent Cowan put handcuffs on Gumbs and pat him down again, going in his pockets and hood. Respondent Cowan

patted down Gumbs's legs and then stood up with a little plastic bag in his hand.

Respondent Cowan asked Gumbs if the bag belonged to him, and Gumbs responded negatively. Thomas explained that seeing drug paraphernalia on the ground was common in that area. Thomas has known Gumbs since junior high school.

On cross-examination, Thomas confirmed that there was a security booth at the front of the building, but she usually entered the building from the back. The rear parking lot entry gate was intended for cars, but it was sometimes left in the open position. Thomas did not know from where Respondent Cowan got the little plastic bag. Even before Gumbs was handcuffed, Thomas observed Respondent Cowan pull out Gumbs's pants pockets. There was nothing inside the pockets.

Thomas did not call CCRB with Gumbs; she filed a complaint on her own. She explained her reason for the complaint: "I was invited to a party and I was on my way to the party. There was no reason for us to be stopped. Nobody else was being stopped in the parking lot. Why do they want to check me for? I wasn't doing anything. All I did was walk through the gate." In a March 2012 CCRB interview, Thomas stated that she and Gumbs had walked three to five steps past the gate that surrounded the building. Thomas was not handcuffed or arrested. At no point did anybody pick something up from the ground and accuse her of being in possession of drugs.

Respondents' Case

Respondents testified in their own behalf.

Respondent Cowan

Respondent Cowan, a 15-year member of the Department, is assigned to Narcotics Borough Brooklyn North. He has never before been subject to any form of discipline, nor has he ever had a CCRB complaint substantiated against him. On March 11, 2012, he and Respondent Polichron were working in plainclothes. At approximately 5:56 p.m. that day they were driving a gray minivan behind the housing complex on [REDACTED]. Respondent Cowan described the area: "We've had a number of problems with drugs, gangs. There's a lot of violence over there, robberies. Just prior to this incident, we had a few shootings there. There was actually a homicide." The police have a good relationship with the building owners and security company. Respondent Cowan explained, "They actually asked for us to do more patrols there. They've given us keys for the doors. They gave us—it's a sticker you put in a window. It's basically an automated device for the back gate."

From the parked van, Respondent Cowan noticed Gumbs and Thomas walk through the closed rear parking lot gate, a gate that was intended for vehicular access. They had waited at the gate for a car to come and then entered the gate behind the car. Respondent Cowan found this to be odd behavior. He explained, "The proper entrance for guests or tenants would be the front entrance which is located on [REDACTED]. There's also a pedestrian entrance on [REDACTED] . . . 2 or 300 feet east of that parking gate. And if you are a resident there, you have a key fob that activates the sensor lock

and you can access the gate and walk in." Guests usually entered the complex through the guard booth at the front, where there were buzzers to the apartments. Respondent's Exhibit (RX) A is a photograph of the buzzer system.

After two or three minutes passed, Respondents drove into the parking lot where they had seen Gumbs and Thomas enter. Respondents drove in a circle around the lot and saw Gumbs and Thomas exiting a tunneled walkway and walking back toward the parking lot. Respondent Cowan explained that the tunnel connected the parking lot area with an interior courtyard. RX B is a photograph of the tunnel taken from the courtyard. The lighting conditions inside the tunnel were bright at the time of the incident. Gumbs's right hand was cupped, but at one point while walking Gumbs opened his hand. Respondent Cowan saw in plain view that Gumbs had a small bag with a green substance in it. Gumbs placed the bag in his pocket and proceeded to walk into the parking lot. Based on his experience, Respondent Cowan believed that Gumbs's bag contained marijuana. At that point, Respondent Cowan knew that he would be arresting Gumbs, so he called for the prisoner van.

Respondents exited their van and approached Gumbs. Respondent Cowan pulled Gumbs to the side and gave him a quick pat down to make sure he had no weapons. Respondent Cowan then brought Gumbs over to the van, handcuffed him, and conducted a complete search. [REDACTED]

Gumbs was placed in the prisoner van when it arrived at the scene. RX D is a supporting deposition that Respondent Cowan prepared for Gumbs's arrest. In the deposition Respondent Cowan wrote that he observed [REDACTED]

[REDACTED] Respondent Cowan signed the deposition

under a warning that false statements were punishable as a class A misdemeanor.

Respondent Cowan testified that he did not [REDACTED]

He explained, "I wouldn't do that. I wouldn't risk my job or my freedom to do something like that."

On cross examination, Respondent Cowan agreed that the incident occurred in a bad neighborhood known for drugs and violent crime. The apartment complex where Person A lived was a target of Respondents' tactical plan that day. Respondent Cowan explained, "We put areas on the tact plan that we are going to go focus on enforcement because those are the areas we either have complaints or high 911 incidents or violence." CCRBX 5 is the tactical plan for Respondents' team from that day. Respondent Cowan drove into the parking lot on [REDACTED] in search of any criminal activity.

The tunneled walkway where Respondent Cowan saw Gumbs and Thomas was separated from the parking lot by a gate. Respondent Cowan observed them walk from the tunnel back into the parking lot. CCRBX 6 is a photograph of the tunnel from outside the gate. Respondent Cowan did not see Gumbs exchange money with anybody, nor did he see Gumbs speak with anyone other than Thomas. Gumbs did not run when Respondents approached him. [REDACTED]

[REDACTED] In a March 2013 CCRB interview Respondent Cowan stated that he did not recall where Gumbs [REDACTED]

[REDACTED] He explained that he had a better memory of the incident at trial (March 2014) because he had the opportunity to review all of his paperwork, speak to the other detectives involved, and go back to the incident location to refresh his memory.

Respondent Polichron

Respondent Polichron, a ten-year member of the Department, is assigned to Narcotics Borough Brooklyn North. He has never before been subject to any formal discipline, nor has he ever had a CCRB complaint substantiated against him.

Respondent Polichron testified that the area where he encountered Gumbs and Thomas was a residential complex where there were a lot of narcotics complaints and shootings. There were even a couple of homicides over the course of a couple of years. He observed Gumbs and Thomas follow a vehicle into the parking lot. A short time later, Respondents followed and saw Gumbs and Thomas coming out of the tunnel.

Respondent Polichron observed [REDACTED]. [REDACTED]
[REDACTED] Respondents exited their van, and Respondent Cowan placed Gumbs under arrest.

Gumbs had Thomas' house keys in his possession, and Thomas asked for the keys back. Before giving the keys to Thomas, Respondent Polichron asked Thomas for identification. Thomas placed her bag on the van and showed him a benefit card and a utility bill. Respondent Polichron gave Thomas the keys. According to Respondent Polichron, Thomas was not stopped. He explained, "She was free to leave at any time. My interactions with her was she had to stay back because Detective Cowan was placing Mr. Gumbs under arrest."

On cross-examination, Respondent Polichron testified that it was not uncommon to see drug transactions in the area, and he has made numerous arrests at [REDACTED]
[REDACTED] He did not see Gumbs exchange money with anybody, nor did he see Gumbs

speak with anyone other than Thomas. He did not suspect Thomas of any criminal activity. Neither Thomas nor Gumbs attempted to flee.

On redirect examination, he testified that there was probable cause to arrest Gumbs even before he was frisked or searched.

Upon questioning by the Court, he explained that when he saw [REDACTED] [REDACTED] Gumbs was standing behind the gate coming out of the tunnel area. He confirmed that there was drug paraphernalia on the ground of the parking lot. There was always a security guard at the front of the building complex. Respondent Polichron believed that the buzzer system worked on the incident date.

On continued redirect examination, he testified that the tunnel was well-lit. He described the tunnel as a location where drug use was common. He explained, "A lot of times what they'll do, they'll keep like the drugs in their mouth, like crack or marijuana, and when they get to a safe location, take it out of their mouth to put it in their pocket."

FINDINGS AND ANALYSIS

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Respondent Cowan stands charged with stopping, frisking, and searching Gumbs without sufficient legal authority. Respondent Cowan testified that Gumbs and Thomas caught his attention when he observed them enter the building complex through the rear entrance, which was not the usual way that building tenants and guests entered. A few minutes later when he went into the parking lot, he saw Gumbs [REDACTED] [REDACTED]. Respondent Cowan placed Gumbs under arrest for [REDACTED]

Gumbs, in contrast, testified that he was stopped, frisked, and searched for no reason whatsoever. He claimed that the [REDACTED] was actually a bag that Respondent Cowan picked up off the ground.

While we can never know with certainty exactly what occurred in the parking lot that day, the Court credits the testimony of Respondents over that of complainants. The claim that Gumbs made about Respondent Cowan planting [REDACTED] on him is one that this Department would not take lightly. *See Case No. 85399/09* (Sep. 21, 2012), in which a ten-year detective was terminated from the Department for his participation in the planting of drugs on innocent parties. The fact that Gumbs's claim went nowhere is an indication that either Gumbs never mentioned it during the investigation, or that investigators heard the claim but were unable to substantiate it. In either of these scenarios, Gumbs's credibility is dramatically undermined.

Moreover, the incident, as described by Gumbs, [REDACTED]
[REDACTED]. It is unfortunately common to find drug paraphernalia or bags containing drug residue on the ground in certain neighborhoods. [REDACTED]
[REDACTED]

Respondent Polichron credibly explained that, based on his observations, he had probable cause to arrest Gumbs from the onset of the encounter. Any frisk or search that occurred after that was consistent with both search and seizure law and Department guidelines.

Accordingly, Respondent Cowan is found Not Guilty.

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Respondent Polichron stands charged with stopping Thomas without sufficient legal authority. As with the case against Respondent Cowan, this case comes down to whom the Court finds more credible. According to Thomas, she did not feel free to leave the scene while Respondent Polichron searched both her bag and her person. Had CCRB believed these allegations of unlawful search, however, Respondent Polichron would have surely been charged with additional acts of misconduct.

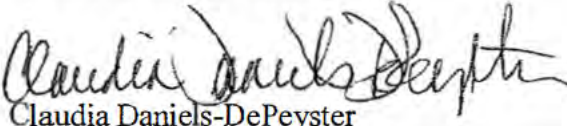
Respondent Polichron, in contrast, credibly testified that his contact with Thomas consisted of keeping her away from the immediate location where his partner was placing Gumbs under arrest. Respondent Polichron did ask to see identification before he gave Thomas keys that Gumbs was holding for her. Thomas was, nevertheless, free to leave at any time.

As with the case against Respondent Cowan, CCRB failed to provide the Court with any reason to consider the testimony of the complainant more believable or reliable than that of Respondent. Accordingly, Respondent Polichron is found Not Guilty.

APPROVED

DEC 19 2014
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials