



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

January 7, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Sgt. Adrian Ashby**
Tax Registry No. 921934
63rd Precinct Detective Squad
Disciplinary Case No. 83137/07

P.O. Pablo DeJesus
Tax Registry No. 915572
67th Precinct Detective Squad
Disciplinary Case Nos. 83136/07; 82345/06

CHART

The above named members of the service appeared before Assistant Deputy Commissioner John Grappone on August 27, 2008, and were charged with the following:

DISCIPLINARY CASE NO. 83137/07

1. Said Sergeant Adrian Ashby, assigned to the 67th Precinct, while on-duty on February 3, 2006, at approximately 0200 hours, while in the vicinity of the intersection of Flatbush Avenue and Church Avenue, Kings County, did wrongfully abuse his authority as a member of the New York City Police Department in that said sergeant searched a person, identity known to the Department, without sufficient legal authority.

P.G. 203-10, Page 1-2

PUBLIC CONTACT - GENERAL REGULATIONS

2. Said Sergeant Adrian Ashby, assigned as aforesaid, at time, date and location set forth in Specification No. 1, having stopped, frisked and searched a person, did thereafter fail and neglect to prepare a Stop, Question, and Frisk Report (UF-250), as required.

P.G. 212-11, Page 1, Paragraph 6

STOP AND FRISK

3. Said Sergeant Adrian Ashby, assigned as aforesaid, at time, date and location set forth in Specification No. 1, did fail to provide his name, and/or shield number when requested, as required.

P.G. 203-09, Pages 1, Paragraph 1

PUBLIC CONTACT - GENERAL

**SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS**

**DISCIPLINARY CASE NO. 83137/07
DISCIPLINARY CASE NOS. 83136/07; 82345/06**

DISCIPLINARY CASE NO. 83136/07

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PUBLIC CONTACT - GENERAL

DISCIPLINARY CASE NO. 82345/06

1. Said Police Officer Pablo DeJesus, presently assigned to the 67th Detective Squad, while assigned to the 67th Precinct, while on-duty, on July 11, 2005, at or about 1725 hours, in the vicinity of Howard Avenue and Livonia Avenue, Brooklyn, New York, was discourteous to a person known to the Department, in that said officer spoke rudely and/or obscenely to said person.

P.G. 203-09, Page 1 Paragraph 2

PUBLIC CONTACT

2. Said Police Officer Pablo DeJesus, presently assigned to the 67th Detective Squad, while assigned to the 67th Precinct, while on-duty, on July 11, 2005, at or about 1725 hours, in the vicinity of Howard Avenue and Livonia Avenue, Brooklyn, New York, did wrongfully and without just cause use excessive force against an individual known to the Department.

P.G. 203-10, Page 1 Paragraph 4

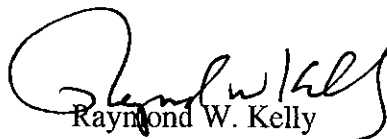
PUBLIC CONTACT - PROHIBITED

**SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS**

**DISCIPLINARY CASE NO. 83137/07
DISCIPLINARY CASE NOS. 83136/07; 82345/06**

In a prior Memorandum issued from this office on September 9, 2009, the sole guilty finding of Specification No. 2, in Disciplinary Case No. 83137/07 against Respondent Ashby, was approved. Further, the sole guilty finding of Specification No. 2, in Disciplinary Case No. 83136/07 against Respondent DeJesus, was also approved. It was thereafter directed that each Respondent be issued a Schedule "B" Command Discipline, as an appropriate disciplinary penalty.

Concomitant with, and pursuant to, the issuance of said Command Disciplines, it is now further directed that the respective Specification No. 2 for each Respondent be dismissed, for adjudication purposes.


Raymond W. Kelly
Police Commissioner



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

September 9, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Sgt. Adrian Ashby**
Tax Registry No. 921934
63rd Precinct Detective Squad
Disciplinary Case No. 83137/07

P.O. Pablo DeJesus
Tax Registry No. 915572
67th Precinct Detective Squad
Disciplinary Case Nos. 83136/07; 82345/06

The above named members of the service appeared before Assistant Deputy Commissioner John Grappone on August 27, 2008, and were charged with the following:

DISCIPLINARY CASE NO. 83137/07

1. Said Sergeant Adrian Ashby, assigned to the 67th Precinct, while on-duty on February 3, 2006, at approximately 0200 hours, while in the vicinity of the intersection of Flatbush Avenue and Church Avenue, Kings County, did wrongfully abuse his authority as a member of the New York City Police Department in that said sergeant searched a person, identity known to the Department, without sufficient legal authority.

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P.G. 212-11, Page 1, Paragraph 6

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P.G. 203-09, Pages 1, Paragraph 1

PUBLIC CONTACT - GENERAL

**SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS**

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DISCIPLINARY CASE NOS. 83136/07 and 82345/06**

DISCIPLINARY CASE NO. 83136/07

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P.G. 203-09, Page 1 Paragraph 2

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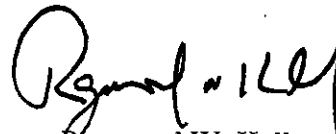
PUBLIC CONTACT - PROHIBITED

SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS

DISCIPLINARY CASE NO. 83137/07
DISCIPLINARY CASE NOS. 83136/07 and 82345/06

In a Memorandum dated December 9, 2008, Assistant Deputy Commissioner Grappone found Respondent Ashby Guilty of Specification No. 2, and Not Guilty of Specification Nos. 1 and 3 in Disciplinary Case No. 83137/07, and further found P.O. DeJesus Guilty of Specification No. 2, and Not Guilty of Specification Nos. 1 and 3 in Disciplinary Case No. 83136/07, and to be Not Guilty of both Specifications in Disciplinary Case No. 82345/06.

Having read the Memorandum and analyzed the facts of these matters, I approve the findings, but disapprove the recommended penalties. For their respective failures to ensure the preparation and filing of a Stop and Frisk Report (*UF-250*), in Disciplinary Case Nos. 83137/07 and 83136/07, Respondents Ashby and DeJesus are to each be issued a Schedule "B" Command Discipline.


Raymond W. Kelly
Police Commissioner



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

September 9, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Sgt. Adrian Ashby**
Tax Registry No. 921934
63rd Precinct Detective Squad
Disciplinary Case No. 83137/07

CHAN

P.O. Pablo DeJesus
Tax Registry No. 915572
67th Precinct Detective Squad
Disciplinary Case Nos. 83136/07; 82345/06

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PUBLIC CONTACT - GENERAL

**SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS**

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DISCIPLINARY CASE NOS. 83136/07 and 82345/06**

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P.G. 203-09, Page 1 Paragraph 2

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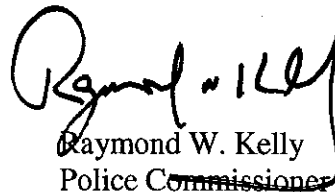
PUBLIC CONTACT - PROHIBITED

**SGT. ADRIAN ASHBY
P.O. PABLO DEJESUS**

**DISCIPLINARY CASE NO. 83137/07
DISCIPLINARY CASE NOS. 83136/07 and 82345/06**

In a Memorandum dated December 9, 2008, Assistant Deputy Commissioner Grappone found Respondent Ashby Guilty of Specification No. 2, and Not Guilty of Specification Nos. 1 and 3 in Disciplinary Case No. 83137/07, and further found P.O. DeJesus Guilty of Specification No. 2, and Not Guilty of Specification Nos. 1 and 3 in Disciplinary Case No. 83136/07, and to be Not Guilty of both Specifications in Disciplinary Case No. 82345/06.

Having read the Memorandum and analyzed the facts of these matters, I approve the findings, but disapprove the recommended penalties. For their respective failures to ensure the preparation and filing of a Stop and Frisk Report (*UF-250*), in Disciplinary Case Nos. 83137/07 and 83136/07, Respondents Ashby and DeJesus are to each be issued a Schedule "B" Command Discipline.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

December 9, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Pablo DeJesus
Tax Registry No. 915572
67 Detective Squad
Disciplinary Case Nos. 82345/06 & 83136/07

Sergeant Adrian Ashby
Tax Registry No. 921934
63 Detective Squad
Disciplinary Case No. 83137/07

The above-named members of the Department appeared before me on August 27 and August 28, 2008, charged with the following:

Disciplinary Case No. 82345/06

1. Said Police Officer Pablo DeJesus, presently assigned to the 67 Detective Squad, while assigned to the 67 Precinct, while on duty, on July 11, 2005, at or about 1725 hours, in the vicinity of Howard Avenue and Livonia Avenue, Brooklyn, New York, was discourteous to a person known to the Department, in that said officer spoke rudely and/or obscenely to said person.

P.G. 203-09, Page 1 Paragraph 2 – PUBLIC CONTACT

2. Said Police Officer Pablo DeJesus, presently assigned to the 67 Detective Squad, while assigned to the 67 Precinct, while on duty, on July 11, 2005, at or about 1725 hours, in the vicinity of Howard Avenue and Livonia Avenue, Brooklyn, New York, did wrongfully and without just cause use excessive force against an individual known to the Department.

P.G. 203-10, Page 1 Paragraph 4 – PUBLIC CONTACT – PROHIBITED

Disciplinary Case No. 83136/07

1. Said Police Officer Pablo DeJesus, assigned to the 67 Precinct, while on duty on February 3, 2006, at approximately 0200 hours, while in the vicinity of the intersection of Flatbush Avenue and Church Avenue, Kings County, did wrongfully abuse his authority as a member of the New York City Police Department in that said officer searched a person, identity known to the Department, without sufficient legal authority.

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P.G. 203-09, Pages 1, Paragraph 1 – PUBLIC CONTACT – GENERAL

The Department was represented by Paul Gallagher, Esq., Department Advocate's Office. Respondent DeJesus was represented by Michael Martinez, Esq. Respondent Ashby was represented by Anthony DiFiore, Esq.

The Respondents, through their counsel, entered pleas 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. 82345/06

Respondent DeJesus is found Not Guilty.

Disciplinary Case No. 83136/07

Respondent DeJesus is found Not Guilty of Specification Nos. 1 and 3. He is found Guilty of Specification No. 2.

Disciplinary Case No. 83137/07

Respondent Ashby is found Not Guilty of Specification Nos. 1 and 3. He is found Guilty of Specification No. 2.

INTRODUCTION

This opinion contains a summary of facts and findings for two distinct incidents. Under Disciplinary Case No. 82345/06, the incident is alleged to have occurred on July 11, 2005, and Police Officer Pablo DeJesus is the sole Respondent. Sergeant Adrian Ashby was called as a witness and testified in Respondent DeJesus' defense. This case was heard first by the Court and was the first case to be summarized in this opinion.

Under Disciplinary Case Nos. 83136/07 and 83137/07, the incident is alleged to have occurred on February 3, 2006, and both DeJesus and Ashby are Respondents. The summary of this case follows Case No. 82345/06.

Both cases are analyzed in the above order under one findings and analysis section and the penalty that is imposed on the Respondents, under the penalty section, points to the applicable disciplinary cases.

SUMMARY OF EVIDENCE PRESENTED

Disciplinary Case No. 82345/06

The Department's Case

The Department called Lydia Ferguson and Sheila Donovan as witnesses. It also offered the out-of-court Civilian Complaint Review Board (CCRB) statements made by Jamel Lewis and Patricia Seabrook.

Lydia Ferguson

Ferguson is retired from the New York City Transit Authority. She was injured at work and receives disability retirement. Her husband owns a laundromat on Tapscott Street in Brooklyn, and she lives a few blocks away from the laundromat. She testified that when she exited the laundromat at 5:25 p.m. on July 11, 2005, she observed two cars stopped across the street and a "Puerto Rican cop" hitting a handcuffed male (subsequently identified as Jamel Lewis). She stated that there were three or four police officers at the location. The Puerto Rican police officer and Lewis were standing on one

side of the vehicle, and the other officers stood on the other side. The officers were not in uniform, and Ferguson did not notice any shields. She explained that she figured the men were police officers because Lewis was in handcuffs. Ferguson was approximately a hundred feet from the scene. She was able to see mouths moving, but she could not hear what they were saying. She does not have hearing problems. Ferguson testified that there was nothing blocking her view of the encounter. It was a sunny day, and traffic was not busy on the street.

Ferguson testified that she observed the Puerto Rican officer hit Lewis any time that Lewis said something to him. According to Ferguson, the Puerto Rican officer punched Lewis in the face as he pushed Lewis into an unmarked police car. Ferguson believed that the Puerto Rican officer used a closed fist. She stated that the Puerto Rican officer continued to hit Lewis while Lewis was inside the vehicle. At one point, a black police officer put his hand on the Puerto Rican officer's shoulder and said something to him. At that point, according to Ferguson, "[T]he officer came back around and got in the car and I guess the guy must have said something and he came back out and went back around and hit him again while he was in the car." Ferguson stated that at one point she observed a woman jump out of the car that Lewis had been driving and enter a building, where a woman named Pat was standing. Ferguson has since discussed the incident with Pat. In the end, Ferguson saw the police vehicle drive away with Lewis in the back seat.

Ferguson testified that she did not know Lewis before the incident. The only time she has ever spoken with Lewis was after the incident when he came and gave her a card. Lewis told her at the time that he might need her to be a witness. When asked if she saw

the Puerto Rican officer from the incident in the courtroom, Ferguson responded, "I can't really say that this was him because I don't remember his face. It's been three years ago." On July 27, 2005, Ferguson was interviewed by a CCRB investigator. Ferguson stated that she did not know how the investigator located her.

On cross-examination, Ferguson testified that she did not initiate contact with CCRB. Ferguson stated that Lewis was placed in the rear passenger seat of the unmarked police car, which was the far side of the car from where she was standing. Ferguson's view of the things on the passenger's side of the car would have, therefore, been blocked by the body of the vehicle. Ferguson could not recall the color of the car. When she first saw Lewis, he was standing on the passenger's side between the window and the trunk. She could not actually see the handcuffs on his hands, but she could see that his arms were behind his back. Lewis was standing upright at the time. She reiterated that she observed the Puerto Rican officer pushing Lewis into the car and hitting him. She testified that she did not see the Puerto Rican officer punch Lewis until Lewis was already in the car. The Puerto Rican officer was still standing outside the car at the time. Ferguson stated that the Puerto Rican officer punched Lewis three or four times, and she believed that the officer connected with Lewis on each of those occasions. Ferguson was not certain which hand the officer used to hit Lewis. Similarly, Ferguson was unable to say in her CCRB interview which hand the officer used, even though the interview was conducted just a couple of weeks after the incident. Ferguson reiterated that she figured the men were police officers because Lewis was in handcuffs. She added, "I'm a street person. I live in Brownsville. I see these things happen. I see police all the time. I see plain clothes. I know people that are cops that wear plain clothes." Besides the Puerto

Rican officer, Ferguson could not recall seeing any of the officers at the scene go near Lewis. Ferguson was never shown a photo array. When she first met with the CCRB investigator, she described the officers at the scene as “a black cop, a Hispanic cop, and two white cops.” She testified that even if she had been shown a photo array at the time of her interview, she would still not have been able to identify the officers because “they were too far away to see any faces.” When Lewis returned to the location a couple of days after the incident, Ferguson did not recognize him either. Lewis had to inform Ferguson that he was “the one who had the incident and was arrested by the cops the other day.” Ferguson could not recall if Lewis appeared to be injured at the time. Ferguson testified that at that meeting, she gave Lewis her name and telephone number. Although Ferguson stated in her July 2005 CCRB interview that Lewis gave her the telephone number for CCRB, she reiterated at trial that she did not call CCRB.

Ferguson testified that at no point during the incident did she or her husband call the police to report what was going on, nor did they approach the officers to ask what was going on. She explained that had they approached the officers, “[t]hen we are going to get involved and they are going to arrest us and all that crazy stuff. That’s how cops do it.” She further explained that there have been incidents that left her with a negative impression of the Police Department, but she has also had positive experiences with police officers. She once filed a CCRB complaint in the early 1990s after an incident where a police officer put a gun to her head and told her, “[S]hut the fuck up, bitch, before I shoot you.” She testified that her complaint “never went through because the guys that were there couldn’t come and testify.” She has been arrested once for shoplifting.

Ferguson testified that Tapscott Street is a wide street, and she reiterated that she could not hear during the incident what the people across the street were saying. It looked like they were having an animated conversation. Ferguson stated that as Lewis was being placed in the police car, she observed a woman jump out of the car that Lewis had been driving. The woman brought a little boy to a building, and the police did not stop her. Ferguson could not recall if the police interacted with the woman in any way. She could not recall if she ever saw or heard the woman yelling at Lewis.

On redirect examination, Ferguson testified that although the car was located between her and Lewis, she was able to see the motion of the Puerto Rican officer hitting Lewis. In addition, she was able to see into the car through the back window. The back window was not tinted.

On recross-examination, Ferguson testified that she could not remember if the Puerto Rican officer ever got into the vehicle with Lewis. The Puerto Rican officer was the only one that Ferguson observed acting inappropriately. She stated that even though she was a hundred feet away and the body of the car was located between her position and the police encounter across the street, she was able to clearly see the officer hitting Lewis as he placed Lewis into the vehicle.

On redirect examination, Ferguson testified that she could not remember Lewis' height and weight. She stated, "It's so long ago. If I seen his face, I wouldn't even know him right now." Similarly, she could not recall the Puerto Rican officer's height and weight.

Sheila Donovan

Donovan has been employed as a CCRB investigator for over four years. She currently holds the title of Investigator -- Level II. On July 14, 2005, she was assigned to investigate the complaint brought by Lewis. The complaint had been referred to CCRB by the Internal Affairs Bureau (IAB). On July 18, 2005, Donovan interviewed Lewis.

[Court Exhibit (CX) 1 is the copy of a warrant check conducted on Lewis. It indicates that Lewis has an active bench warrant for assault in the third degree. CX 2 contains a summary of the steps taken by the Department Advocate's Office to have Lewis appear at trial. This summary indicates that the investigating officer assigned to this case made service to Lewis by affixing a copy of a subpoena to his door, delivered the subpoena through certified mail and first class mail, and confirmed through a postal check that the Department's address for Lewis was accurate. The Assistant Department Advocate stated that the receipt for the subpoena sent by certified mail was never returned.

DX 1 and 1A are the tape and transcript of Donovan's July 2005 interview with Lewis. In the interview, Lewis stated that at approximately 5:25 p.m. on July 11, 2005, he was driving south on Tapscott Street. His 30-year-old cousin, Trisha, was in the back seat with her six-year-old son, and Lewis' 11-year-old cousin was next to him in the front seat. There was also a dog in the car. When Lewis made a U-turn to park on the opposite side of the street, a Department vehicle pulled up next to him. He stated that at that point he was already halfway out of the car because he had just parked in front of Trisha's home.

Lewis was instructed to stay inside the vehicle, and he sat back down with his legs hanging out of the car. One of the police officers asked Lewis for his license and registration. Lewis informed the officer that he did not have identification on him, and he proceeded to give the officer his license number and social security number. Lewis stated that there were four police officers at the scene: a tall black male approximately 35 years old, a stocky Hispanic male approximately 43 years old, a muscular white male approximately 32 years old, and a second white male approximately 29 years old. According to Lewis, one of the white officers started to search the car, and he (Lewis) stood up and asked what the officer was looking for. At that point, Lewis was instructed to stand at the rear of the vehicle, which is where the Hispanic officer was located. Lewis stated that the windows on the car that he was driving were illegal because they were tinted so dark. He stated that he was not looking or reaching for anything in the car prior to being stopped.

Lewis stated that the Hispanic officer never gave him his name or shield number, but he "added two and two together" and assumes that it was Respondent DeJesus. Respondent DeJesus frisked Lewis, and Lewis asked again why the police were searching the car. According to Lewis, the police called him a "smart ass" and threatened to take him down to the station house if he did not shut up. Lewis saw the police search the back seat and the glove compartment. At one point, according to Lewis, Respondent DeJesus began cursing. Lewis stated, "All I really heard was the cursing, f'n this, you know shut the f up, things like that." When Lewis asked Respondent DeJesus why he was cursing, Respondent DeJesus called him a smart ass again, handcuffed him, and led him to the Department vehicle. Meanwhile, Lewis' cousins in the car were telling Lewis to be quiet

and to cooperate with the police. At one point, Trisha stood up and told Lewis again to shut up and be cooperative. The black officer also told Lewis to shut up, and Lewis asked, "Shut up for what?" Lewis described his demeanor as calm. He stated that he did not disrespect the officers, did not raise his voice, and was not hostile to them in any way. He further stated, however, that he let the officers know that he was not going to let them violate his rights. When the officers had threatened to take him down to the station house, Lewis replied, "So, take me to the precinct. Um, a night in jail means nothing to me."

Lewis stated that he was "talking a lot of garbage" as Respondent DeJesus walked him to the Department vehicle. He told Respondent DeJesus, "You guys are really something else. There are real criminals going around, you're violating me and really think you're tough because you have your badge, and the bottom line is you don't intimidate me." According to Lewis, Respondent DeJesus opened up the back door of the police vehicle and told him, "Get in the car you little faggot." When Lewis replied, "Your mother's a faggot," Respondent DeJesus sat Lewis down and punched him in the face. Lewis could not recall if the car door was still open or if Respondent DeJesus punched through the open window. In any case, according to Lewis, Respondent DeJesus threw a right hook with a closed fist into the left side of his face. Lewis immediately looked up to see if anybody else saw the punch. According to Lewis, all three of his cousins were watching, as were an elderly woman, a bunch of kids standing across the street, and a bunch of adults hanging out by the laundromat. Lewis stated that the witnesses looked as if they could not believe what they saw. Lewis stated that Respondent DeJesus closed the car door and said, "Say something about my mother

again.” When Lewis called Respondent DeJesus’ mother “the B word,” Respondent DeJesus swung at him again. This time, Respondent DeJesus swung through the open front window and failed to make contact with Lewis. At that point, according to Lewis, the three other officers at the scene held Respondent DeJesus back and told him to calm down.

Lewis described Tapscott Street as a “wide road with a whole divider in the middle.” He continued, “So those down by the laundromat on the other side of the street, they didn’t get as good of a view as the people standing on that side of the street.” According to Lewis, the witnesses who observed the incident on his side of the street were located six to ten feet from the encounter, and the witnesses who observed the incident from across the street were 50 feet away.

Lewis stated that while he was in the Department vehicle, he mentioned IAB and going to the hospital. According to Lewis, he asked again about going to the hospital when he was standing at the station house desk, but nobody responded. He stated that he could feel his face was swollen, although the swelling was not visible at the time. In addition, according to Lewis, he was spitting blood, and he even asked an officer for a cup to spit into. At one point, the black officer who had been at the arrest scene came into the cell area and asked Lewis if he wanted “to make a big deal out of nothing.” Lewis told the officer, “I was assaulted by a cop. . . . If you’re not my lawyer, a doctor, or Internal Affairs, I don’t have nothing to say to you.” Respondent DeJesus then entered the cell area and asked Lewis what the problem was. According to Lewis, when he accused Respondent DeJesus of punching him in the face, Respondent DeJesus denied it. As Respondent DeJesus walked out of the room, he informed Lewis that his mother had

died two months earlier and told Lewis, "You and me have unfinished business on the street." Lewis stated that Respondent DeJesus then returned and asked him if there was anything else that he wanted to say. Lewis knew that Respondent DeJesus was recording the conversation on his cell phone, and Lewis told Respondent DeJesus that he had nothing to say. Later, a lieutenant entered the cell area, and Lewis told him that an officer had assaulted him and he needed to go to the hospital. Lewis stated, "It seemed to me like they were prolonging me going to get medical attention because I guess they were hoping for the bleeding to stop, for the swelling to go down." Ultimately, an Emergency Medical Technician (EMT) was sent in to treat Lewis. The EMT told Lewis that there was no swelling on his face and no bleeding in his mouth, but Lewis insisted on going to the hospital anyway. At the hospital, according to Lewis, the doctor told him that his face was, in fact, swollen and bruised and that he had a laceration inside his cheek.

Lewis stated that during the course of the incident, Respondent DeJesus cursed at his six-year-old cousin, called his young cousins "little mutant kids," and told Trisha, "Sit down and shut up, you bitch."

DX 2 consists of certified medical records from Kings County Hospital, dated July 11, 2005. They indicate that Lewis went to the emergency room that day with an abrasion in the oral mucosal membrane (left side) and an abrasion on his right arm. He was prescribed Motrin.]

On cross-examination, Donovan testified that she recommended that the allegations against the Respondent be substantiated because of the "overwhelming

evidence.” Donovan stated that although it would have been simple for her to set up a photo array, she chose not to show a photo array to Lewis or any of the witnesses to the incident. She explained that she did not think showing a photo array was necessary because she already had the officers that were on the scene identified, and it was clear from Lewis’ interview that he was talking about his arresting officer, who was Respondent DeJesus. Moreover, showing a photo array to the witnesses would not have helped since the witnesses did not seem confident in their abilities to identify which of the officers they observed using force against Lewis.

On the night of the incident, investigators from IAB went to the hospital to interview Lewis. The IAB investigators took photographs of Lewis. Donovan stated that she did not find any corroboration that the incident left Lewis bleeding profusely through his mouth. When Lewis was brought into the station house on the day of his arrest, the desk sergeant indicated in the command log that Lewis’ physical condition was “apparently normal.” It was later on that day that Lewis requested medical aid. [RX A is a copy of the FDNY Prehospital Care Report, which was prepared by the EMT responsible for transporting Lewis to the hospital. The report indicates that Lewis complained of pain in his jaw and stated that he could not open his mouth. The technician did not find any bleeding, swelling, pain to touch, disfigurement, or abnormal movement to Lewis’ cheek or jaw. RX B consists of two photographs of Lewis’ face taken head on, one photograph of the left side of Lewis’ face, one photograph of Lewis’ handcuffed hands, and an IAB Investigating Officer’s Report. The report indicates that the photographs were taken while Lewis was in the hospital on the night of the incident. The IAB investigator noted in the report that he did not observe any injuries on Lewis.]

When the police pulled Lewis over on July 11, 2005, Lewis was in the car with his cousin, Latrisha Douglas, and her children. Donovan asked Douglas for an interview, but Douglas was not compliant. Donovan was never given an explanation for Douglas' failure to comply. Donovan stated that she would have really liked to interview Douglas because Douglas was closer to the encounter than any other witness. Lewis told Donovan that Douglas instructed him during the course of the incident to be quiet and relax.

Douglas' husband owned the car that Lewis was driving on the day of the incident. Lewis initially alleged that the car was damaged by the police. This charge was ultimately dropped because no corroboration of damage could be produced. Donovan never spoke to Douglas' husband about it. Donovan stated that Lewis was "fairly active" in helping her interview witnesses. In fact, Lewis went out and gave people Donovan's business card. Donovan interviewed Ferguson at the laundromat. Donovan estimated that Ferguson was standing 30 to 50 feet from the police encounter. She described Tapscott Street as "a normal street, [m]aybe a little wider than usual." Lewis indicated to Donovan that he intended to bring a lawsuit based on the July 11, 2005 incident.

During the course of her investigation, Donovan interviewed witness Patricia Seabrook. Seabrook told Donovan that it was one of the white police officers who placed Lewis in the car and punched him in the face. Donovan testified that she discredited Seabrook's statement because it was inconsistent with the statements provided by others, including the officers themselves.

[CX 2 contains a summary of the steps taken by the Department Advocate's Office to have Seabrook appear at trial. This summary indicates that the investigating officer assigned to this case made service to Seabrook by issuing a subpoena to a man who was present at her residence. Seabrook later called the Department Advocate's Office to acknowledge receipt of the subpoena. In addition, the investigator delivered a subpoena to Seabrook through certified mail.

DX 3 and 3A are Seabrook's interview tape and transcript, dated July 27, 2005. Seabrook stated that at approximately 5:25 p.m. on July 11, 2005, she was walking to visit a friend at 187 Tapscott Avenue. As she approached the building, she observed a Department vehicle pull up alongside a parked car (previously identified as the car Lewis was driving). Four police officers approached the car: one of the officers was black, one was Hispanic, and two were white. Lewis started to ask the officers why he was stopped, and the police asked to see his papers. Seabrook stated that she did not look at the officers closely because everything happened so fast. Also, she was trying to pull the children who had been in the car away from the incident. Seabrook stated at first that she observed one of the officers "roughing up" Lewis, but she could not say which officer specifically. She subsequently stated, however, that it was one of the white officers who removed Lewis from the car, asked him questions, made him turn around, placed handcuffs on him, roughed him up, and shoved him into the Department vehicle. Seabrook defined "roughing up" Lewis as pulling his arms and shoving him into the car. Seabrook continued that the same officer (one of the white officers) repeatedly instructed Lewis to shut up, called Trisha a bitch, and punched Lewis in the face with a closed fist when Lewis said something. Seabrook could not hear what was being said, but she

figured that Lewis must have said something that the officer did not want to hear. Seabrook stated that at no point did she hear Lewis disobey police instructions, get loud, use profanity, or act in a resistant manner. According to Seabrook, Lewis was completely cooperative and merely asked why he was being arrested. At one point during the incident, Seabrook entered the building and called to make a telephone complaint about the police conduct she was observing. She continued to watch the incident from inside the building. The car was parked directly in front of the window through which Seabrook was watching.

Seabrook stated that it was only the white officer that really interacted with Lewis. She stated that she could not describe this officer because she did not look at him that closely, and she did not know if she would be able to identify any of the officers in a photo array. Later in the interview, Seabrook stated that it might have, in fact, been the Hispanic officer who had interaction with Lewis, and she was not even certain whether the officer she had previously identified as Hispanic was even, in fact, Hispanic.]

On redirect examination, Donovan testified that she conducts on average 20 to 25 investigations a year. She stated that she did not know how often she shows a photo array to witnesses, but she estimated that she uses photo arrays in ten percent of her cases. She explained that she did not use a photo array in this case because she was able to identify Lewis' arresting officer and the other officers at the scene. Moreover, the complainant and witnesses were able to distinguish the officers without the use of photographs. When asked why she did not show Seabrook a photo array after Seabrook stated that it may have been a white officer or a Hispanic officer who struck Lewis,

Donovan replied, "Well, if [Seabrook] couldn't remember whether the officer was Hispanic or white, how is she going to pick someone out of a photo array. It didn't make sense to me to waste time showing photos of white and Hispanic officers when it didn't seem clear to me that she remembered . . . which it was."

The Respondent's Case

Respondent DeJesus called Sergeant Adrian Ashby as a witness and testified in his own behalf.

Sergeant Adrian Ashby¹

Ashby, a ten-year member of the Department, is currently assigned to the 63 Precinct Detective Squad. He has been a sergeant for four years. On July 11, 2005, he was assigned as the 67 Precinct anti-crime sergeant. On that day, he was riding in an unmarked Department vehicle with Respondent DeJesus, a Police Officer Barra, and a Police Officer Tancredi. Ashby testified that they pulled Lewis over after they observed him run a red light and make an illegal u-turn. As the officers approached the car, Trisha exited the car with a child and a dog. Lewis also started to exit the car, and Barra walked up to the driver's side. There was discussion between Barra and Lewis, while Ashby and Respondent DeJesus remained at the rear of the vehicle. At one point, according to Ashby, Lewis seemed to become upset and argued with Barra. After Barra informed the rest of the officers that Lewis did not have identification, Lewis was brought to the rear of the car. Respondent DeJesus repeated the request for identification. Ashby testified

¹ While Ashby is a Respondent in the subsequent case he is not a Respondent in this matter. Therefore, to avoid confusion he will not be referred to as a Respondent here.

that Lewis cursed at the officers and stated words to the effect of, "What the fuck is wrong with you guys? All you are doing is harassing us. You have nothing better to do. You come over here and stop me for no reason. My fucking ID is at my house. Why don't you take your lazy asses over there and freaking go get it for yourself." When Lewis failed to produce identification, Ashby directed Respondent DeJesus to place Lewis in handcuffs. Ashby was standing right next to Respondent DeJesus during the handcuffing process. Ashby stated that he did not see Respondent DeJesus strike or punch Lewis in any way.

Ashby testified that after handcuffing Lewis, Respondent DeJesus brought Lewis to the back door of the Department vehicle. He stated that when Respondent DeJesus first attempted to place Lewis inside the rear passenger seat of the vehicle, Lewis put his leg on the bottom of the car's doorframe and pushed back. According to Ashby, Lewis was stating words to the effect of, "I am not getting in this fucking car. You arrest me for no reason." At one point, Respondent DeJesus grabbed Lewis by the shoulder and pushed him down into the vehicle. At the time, Ashby was standing by the front passenger door of the vehicle. The opened rear passenger door was located between where Ashby was standing and where Respondent DeJesus was standing with Lewis. Ashby testified that he did not see Respondent DeJesus strike Lewis or push Lewis against the vehicle.

Ashby testified that after he was placed in the car, Lewis continued to curse and started to make references to Respondent DeJesus' mother, such as, "I'm your father. I fucked your mother." According to Ashby, Respondent DeJesus started at that point to walk away. Ashby instructed Respondent DeJesus to continue walking away. Ashby

explained that Respondent DeJesus' mother was sick at the time and was in the hospital. Ashby realized that these comments about his mother might have an impact on Respondent DeJesus, and he (Ashby) did not think that Respondent DeJesus needed to hear them. Ashby testified that at no point did he observe Respondent DeJesus get into the car with Lewis or try to attack him. Similarly, at no point did Ashby have to place his arms on Respondent DeJesus in order to get him to walk away from Lewis. According to Ashby, nobody hit Lewis that day. Lewis, nevertheless, repeatedly stated, "I am going to sue you. I'm going to get rich off of you." Ashby explained that Lewis had already started to allege that he had been assaulted. While Barra and Ashby went back to the station house in the Department vehicle with Lewis, Tancredi and Respondent DeJesus drove to the command in the car that Lewis had been driving. To Ashby's knowledge, Respondent DeJesus had no further contact with Lewis. Because of Lewis' allegation, Ashby called from the station house for an ambulance. He also immediately notified IAB and his Integrity Control Officer. He explained that these notifications are supposed to be made in all cases involving an allegation of assault.

Ashby testified that at no point while at the scene did he lose sight of Lewis. He stated that based on his observation there was no possible way that Lewis could have been assaulted by one of the police officers. He further stated that he did not see any swelling to Lewis's face or any other injuries. Lewis was not bleeding and did not have any trouble speaking. Ashby presented Lewis at the desk, and the desk officer did not say anything about Lewis needing medical attention. At no point during the July 11, 2005 encounter did Ashby witness Respondent DeJesus commit any sort of misconduct.

On cross-examination, Ashby testified that as team supervisor, it would have been his duty to report any of his subordinates who committed misconduct. He described Lewis' physical stature as "slimmer." Respondent DeJesus was the first officer at the scene to have any kind of physical contact with Lewis. Ashby testified that before Lewis was handcuffed, he was cursing, screaming, and acting boisterous, as if he was trying to attract a crowd. Although Lewis was gesturing with his arms, he was neither swinging nor flailing them. Ashby testified that Lewis was arrested because he had committed a traffic violation and could not produce any form of identification. He was, therefore, ineligible to receive a summons in lieu of arrest. This was the reason Lewis was handcuffed, not because he posed a physical threat to the officers at the scene or because a weapon had been found on his person or in the car that he had been driving. When Lewis was asked to put his hands behind his back, he did not resist. Ashby reiterated that he was standing right next to Respondent DeJesus as he handcuffed Lewis. At the time, Barra and Tancredi were standing at the front of the car. Both Ashby and Respondent DeJesus escorted the handcuffed Lewis to the rear passenger door of the Department vehicle, but it was only Respondent DeJesus who actually placed Lewis into the back seat of the car. Respondent DeJesus used both hands to place Lewis in the car. Ashby reiterated that Lewis resisted getting into the car by placing his foot on the bottom of the doorframe and pushing backward. He further reiterated that Respondent DeJesus responded by pushing Lewis down and into the car. Ashby testified that he did not recall Respondent DeJesus using profanity in an attempt to get Lewis' compliance, nor did he hear Respondent DeJesus call Lewis a "little faggot." At the time, Ashby was standing two feet from Respondent DeJesus and Lewis.

Ashby testified that the rear windows of the Department vehicle were closed and tinted. When Ashby first saw Lewis, he did not notice any injuries to his face. It was Ashby who noted in the command log that Lewis' physical condition was apparently normal. The desk officer was standing right next to him as he made the log entry. Ashby called IAB no more than ten minutes after making the entry.

Respondent Police Officer Pablo DeJesus

Respondent DeJesus, a 13-year member of the Department, is currently assigned to the 67 Precinct Detective Squad. During the course of his career he has made approximately 400 arrests. He was on track to be made detective, but his promotion was put on hold as a result of the current case. On July 11, 2005, he was assigned to an anti-crime team with Ashby, Barra, and Tancredi. They were riding in an unmarked Department vehicle with tinted windows when they observed Lewis disregard a red light, make a U-turn, and then park his car. The police officers decided to conduct a car stop, and Barra approached the driver's window. Lewis was already getting out of the car, as was Trisha with a child and a dog. Barra spoke with Lewis while Respondent DeJesus stood at the rear of the car. After Lewis was directed to walk toward the rear of the car, Respondent DeJesus asked him for identification. According to Respondent DeJesus, Lewis started cursing and stated, "Fuck you. I don't need to give you shit, man. Who the fuck you guys think you are? Don't you guys have anything better to do?" Respondent DeJesus asked Lewis again to see identification. Respondent DeJesus described Lewis' response as "irate." At the time, Ashby was standing approximately two feet away. Lewis failed to produce identification, and Ashby instructed Respondent DeJesus to

arrest Lewis. Respondent DeJesus testified that when he took out his handcuffs, Lewis flailed his hands in the air a couple of times. Lewis' hands made contact with Respondent DeJesus' hand, but Respondent DeJesus did not believe the contact was intentional. Lewis complied with Respondent DeJesus' direction to turn around, and Respondent DeJesus was able to successfully handcuff him.

Respondent DeJesus testified that he escorted Lewis to the rear passenger door of the Department vehicle and instructed Lewis to get inside. According to Respondent DeJesus, as Lewis was getting into the vehicle, he pushed his foot off of the floorboard, pushing his body back toward Respondent DeJesus. At that point, Respondent DeJesus put his left hand on Lewis' head and his right hand on Lewis' shoulder and pushed him inside the car. Because there were flashlights, Activity Logs, and bottles of water in the back seat, Respondent DeJesus had to reach around Lewis to gather these things and throw them onto the front seat. This process took five to ten seconds. Respondent DeJesus then closed the car door and walked away. At one point, Lewis started to talk about Respondent DeJesus' mother. At that point, Respondent DeJesus got out of the car, and Ashby told him to walk away. Respondent DeJesus' mother had recently had a stroke and was in the hospital at the time. Respondent DeJesus and Tancredi drove back to the command that day in the car that Lewis had been driving. Respondent DeJesus had no further contact with Lewis.

Respondent DeJesus testified that he never punched Lewis in the face, slammed him against the car frame, cursed at him, called him a "faggot," or spoke rudely to him. Furthermore, there was never any impact between his hands or fists and Lewis' face, he never took a swing at Lewis, and nobody ever had to push Respondent DeJesus away

from Lewis. At no point, according to Respondent DeJesus, did he sit down in the Department vehicle next to Lewis. Ashby was right next to Respondent DeJesus during the entire encounter. Ashby never admonished Respondent DeJesus or accused him of wrongdoing. During the incident, Lewis stated, "This is a good day. . . . This is some good shit. I am going to get a good mother fucking lawsuit." Respondent DeJesus stated that he did not see Lewis bleeding or observe any injuries whatsoever to him. Lewis was charged that day with two Vehicle and Traffic Law violations. He was also charged with reckless endangerment because the child in the car was not in a child harness seat. Respondent DeJesus has not been served with lawsuit papers in this case.

On cross-examination, Respondent DeJesus testified that Lewis had exited the car by the time Barra approached him. Lewis was loudly cursing. Respondent DeJesus was assigned as the arresting officer because he was the team member who actually saw Lewis run the red light. When Lewis flailed his arms, Respondent DeJesus did not consider it a physical threat. Respondent DeJesus stated that Lewis was only verbally aggressive. Respondent DeJesus frisked Lewis and did not feel anything that resembled a weapon. Lewis was not resistant as Respondent DeJesus handcuffed him. According to Respondent DeJesus, Ashby did not assist him in escorting Lewis to the Department vehicle. While Lewis was getting into the car, the opened car door would have been located between Ashby and Respondent DeJesus. The car windows were rolled up. Respondent DeJesus reiterated that Lewis resisted getting into the vehicle by pressing his foot down against the doorframe. At the time, Lewis was cursing loudly. Respondent DeJesus testified that he walked away when Lewis started talking about his mother. He explained, "When I heard what he was saying, I didn't want to be there. So I just walked

away. The guy had no knowledge of my mother being in the hospital. He doesn't know me, I don't know him. I am not going to get upset or so enraged that I have to do something, so I just walked away."

Disciplinary Case Nos. 83136/07 & 83137/07

The Department's Case

The Department called Delene Bromirski as its sole witness. It also offered the out-of-court CCRB statements made by Stephan Quashie and Wayvon Wiltshire.

Delene Bromirski

Stephen Quashie and Wayvon Wiltshire did not appear to testify at trial. CX 2 contains a summary of the steps taken by the Department Advocate's Office to have Quashie appear at trial. This summary indicates that Quashie was personally served a subpoena and also had a subpoena sent by certified mail and first class mail. According to the Assistant Department Advocate (the Advocate), Quashie indicated in a telephone call on July 28, 2008 that he was leaving for Trinidad and did not know when he would be back. The summary also contains the steps taken to have Wiltshire appear at trial. The summary indicates that service was made to Wiltshire by affixing a copy of a subpoena to his door and also delivering the subpoena through certified mail and first class mail. According to the Advocate, Wiltshire acknowledged receipt of the subpoena in a July 28, 2008 telephone call, but the receipt for the subpoena sent by certified mail was never returned. The Advocate noted that when the CCRB investigator asked

Quashie and Wiltshire to come in to view photo arrays, both men refused. The Advocate described Quashie and Wiltshire as "at the very least, reluctant witnesses and perhaps totally uncooperative."

DX 1 and 1A are the tape and transcript of Morril's interview with Quashie, dated February 16, 2006. In the interview, Quashie stated that at approximately 2:00 a.m. on February 3, 2006, he was looking for parking in front of a club on Church Avenue in Brooklyn. As he was backing up into a parking spot, an unmarked Department vehicle pulled up behind his car. Two police officers approached Quashie's car: a white officer with black hair approached the driver's side, and a black officer approached the passenger's side. The white officer with black hair asked Quashie if the car belonged to him. Quashie replied that it did. The officer asked Quashie to take the keys out and place them on the dashboard. When Quashie asked why, the officer asked for his license and registration. Quashie took out his keys and gave his paperwork to the officer. The officer instructed Quashie to get out of the car and proceeded to search him as he (Quashie) leaned over the car. According to Quashie, the officer patted him down, rubbed him all over, and went through his pockets. Quashie did not have anything in his pockets except possibly a couple of sticks of gum. Meanwhile, the black officer at the scene took Wiltshire, who had been sitting in the passenger's seat, out of the car and frisked him. A third person (Devon Peterkin) was also removed from the car, and a second Department vehicle arrived at the scene. Quashie stated that an officer with white hair and a "chubby" officer got out of this second Department vehicle. The officer with white hair asked Quashie questions while the officer with black hair searched the car. At one point during the search, the officer with the black hair put Quashie's car keys in his

pocket. Quashie stated that there were two knives by the handbrake. He explained that he kept a small pocketknife and a butter knife in the car to cut bagels. At one point, Quashie was permitted to get back inside his car, and the officer with the black hair gave him back his paperwork. Wiltshire and Peterkin then returned to the car. Quashie asked the officer with the black hair for his shield number, but the officer ignored him. Quashie heard Wiltshire and Peterkin ask the black officer and the chubby officer for their shield numbers. According to Quashie, none of the shields was visible. The officers drove away with Quashie's car keys. Quashie called 911. The police officers returned 20 or 25 minutes later to return the keys. Quashie tried to walk to the rear of the Department vehicle in order to get the license plate number. The black officer instructed him not to go around the rear of the car and then threw the keys to him.

DX 2 and 2A are the tape and transcript of Morril's interview with Wiltshire. In the interview, Wiltshire stated that as Quashie was reversing into a parking spot the police pulled the car over. A white male officer, who had been the driver of the Department vehicle approached Quashie. A black officer approached the passenger's side, which is where Wiltshire was sitting. According to Wiltshire, Quashie followed police instructions to place the car keys on the dashboard and to produce his license and registration. The black officer then asked Wiltshire for identification and instructed him to get out of the car. When Wiltshire got out of the car, the officer started patting him down. According to Wiltshire, the officer stuck his hands in his pockets. Wiltshire asked why he was being searched. He told the officer, "You can't search me. I don't consent [to] a search." Wiltshire stated that all he had in his pockets at the time were papers and a lighter. Wiltshire asked the black officer where he worked and also asked him for his

name and shield number. The black officer showed Wiltshire his shield, which he wore on a chain around his neck. The shield was silver or black and had blue or black numbers on it. Meanwhile, the white officer searched Quashie and the car. The officer found two knives, a bread knife and a small pocketknife. Then a second Department vehicle arrived at the scene. Wiltshire described one of the officers from this second vehicle as a short, white male who had "most of the attitude." This short officer removed Peterkin from the backseat of the car and searched him. After Wiltshire, Quashie, and Peterkin were permitted back in the car and the police drove away, Quashie realized that the police had his car keys. A couple of minutes later, the police returned with the keys. Wiltshire started walking to the back of the Department vehicle to get the license plate number. When the officers realized what he was doing, they threw the keys. According to Wiltshire, the front of the Department vehicle did not have a license plate. Wiltshire stated that he and Quashie do not drink but "just took like a couple shots" that night. Peterkin was drinking.

Bromirski is currently employed as a supervising investigator at CCRB. She has worked at CCRB for approximately four years. She used to supervise an investigator by the name of Gregory Morril. Morril left CCRB early last year. Before leaving, Morril had the opportunity to interview Stephan Quashie and Wayvon Wiltshire. Bromirski testified that she has made herself familiar with the case that Morril was working on and has reviewed the interview tapes.

From her examination of the case file, Bromirski learned that on February 21, 2006 Morril requested copies from the 67 Precinct and 70 Precinct of any Stop, Question, and Frisk Reports (UF-250s) prepared for Quashie, Wiltshire, or Devon Peterkin. In

Question, and Frisk Log for February 3, 2006. On voir dire, Bromirski testified that the Stop, Question, and Frisk Logs are computerized records of the handwritten UF-250s that police officers submitted at their commands. July 2006 was the last time that CCRB asked for Stop, Question, and Frisk Logs or copies of UF-250s relating to this case. Bromirski stated that she was not certain if the logs are created the same way today as they were in 2006. [DX 3 is a copy of the 70 Precinct Stop, Question, and Frisk Log for February 3, 2006, and DX 4 is a copy of the log received from the 67 Precinct for that day. The logs were run on August 2, 2006. Neither of the logs indicates that Respondent Ashby or Respondent DeJesus prepared a UF-250 that day. Similarly, neither log indicates that Quashie, Wiltshire, or Peterkin was the subject of a UF-250 that day.]

Bromirski testified that Quashie made a 911 call on February 3, 2006. [DX 5 and 5A are the tape and transcript of the call. When the 911 operator asked Quashie if the police officers showed him their shields, Quashie replied, "No, they didn't. Each time we asked them for their badge number they didn't show us nothing." Quashie continued, "All they did was tell us to stay inside the car and they were roughing us up. They pulled out two of my homeboys, searching their pockets."] Bromirski explained that the 911 operator transferred Quashie's call to IAB. IAB ultimately referred the complaint to CCRB.

On cross-examination, Bromirski testified that she reviewed the case with Morrill. She stated that Morrill sent many letters and left at least ten telephone messages with both Quashie and Wiltshire asking them to come in for photo arrays. Neither Quashie nor Wiltshire ever responded. As a result, no photo arrays were ever conducted in this case.

Members of the Brooklyn South Investigations Unit also attempted to meet with Quashie and Wiltshire, but the two men were uncooperative and refused to meet.

The Respondents' Case

The Respondents testified in their own behalf.

Respondent Sergeant Adrian Ashby

Respondent Ashby testified that on February 3, 2006, he was assigned as the 67 Precinct anti-crime sergeant. On that day, his tour of duty was 5:30 p.m. until 2:10 a.m., and he was assigned to an unmarked Department vehicle with Respondent DeJesus. He was the vehicle operator, and Respondent DeJesus was the recorder. Respondent Ashby stated that, as all Department vehicles must, the vehicle that they were driving that night had both a front and a back license plate. He testified that at approximately 2:00 a.m., he observed Quashie's car circling three or four times around the area of Church Avenue and Bedford Avenue and then double-park. The Respondents approached Quashie's car because it was double-parked. According to Respondent Ashby, he approached the driver's side, and Respondent DeJesus approached the passenger's side. As Respondent Ashby asked Quashie for his license and registration, he was able to see in plain view a knife in between the two front seats of the car. At that point, Respondent Ashby became concerned for his safety, and he asked Quashie to get out of the car. He also asked Quashie to turn off the car since he did not want Quashie to drive away and possibly hit him or his partner. Quashie complied with Respondent Ashby's requests. When Quashie exited the car, he had the car keys in his hand. Respondent Ashby took the keys because

he did not want Quashie to be holding the keys in the event that Quashie took a swing at him.

Respondent Ashby testified that he patted down Quashie. Quashie did not have any weapons on his person. Respondent Ashby stated that at no point did he search Quashie's pockets. When everybody was out of the car, Respondent Ashby reached in to remove the knife. At that point, he noticed an open bottle of alcohol in the rear seat. At some point, another unmarked Department vehicle arrived at the scene. Respondent Ashby did not know the officers in this second vehicle, and he did not know where they worked. Respondent Ashby explained that the officers were not from the 67 Precinct, and the stop technically occurred within the confines of the 70 Precinct. He further explained that the 67 Precinct and the 70 Precinct are adjoining precincts, and the stop occurred right near the border. Respondent Ashby ultimately determined that knife was not illegal, and he placed it back in the car. It was a folding knife with a short blade. Respondent Ashby stated that Peterkin was intoxicated, but he did not believe Quashie had been drinking at all. He described Quashie's demeanor as "very civil." According to Respondent Ashby, there was nothing out of the ordinary about the stop. Respondent Ashby told Quashie that he was not going to give him a summons for the open container of alcohol since it was Peterkin who was drinking and he (Quashie) was being a gentleman. In the end, Respondent Ashby opted to merely warn and admonish Quashie for the open container and the double-parking.

When Respondent Ashby had driven a block from the incident, he realized that he still had Quashie's car keys. As he was turning around to head back to the scene of the incident, he was notified by either telephone or radio about the keys. Respondent Ashby

returned to the scene and gave Quashie back the keys. At that point, according to Respondent Ashby, Quashie seemed a little bothered. Respondent Ashby testified that he was dressed in plainclothes that day with his shield displayed on a chain around his neck. When he approached Quashie's car, the shield and chain were over his outermost garment. Respondent Ashby stated that at no point during the entire encounter did anyone ask him for his name or shield number. He further stated that he would have provided that information had he been asked for it. Respondent Ashby recalled that Respondent DeJesus also had his shield displayed.

Respondent Ashby testified that police officers place their UF-250s in a box at the desk. At some point after the box gets full, someone takes the UF-250s out, places a rubber band around them, and takes them to the back. Usually a cadet then sorts the reports by date and places them in a drawer until someone is available to enter them in a computer. The person who does the entering makes photocopies of the reports. These photocopies are kept at the precinct. Under the old system, the person who entered the reports in the computer assigned each report a handwritten number. Under a new system, the computer itself generates numbers for the reports. According to Respondent Ashby, it was difficult to track UF-250s under the old system, and it was possible for reports to get lost. He is aware of incidents where UF-250s were submitted by officers but were never actually entered in the computer. Respondent Ashby testified that he did not prepare a UF-250 for Quashie's stop, and he did not recall instructing Respondent DeJesus to prepare one. He explained that while the police officer he is working with would usually prepare the report, he does not ordinarily direct his officers to prepare one.

On cross-examination, Respondent Ashby testified that all he entered in his Activity Log for February 2, 2006 was that his tour began at 5:26 p.m., he started patrol at 6:00 p.m., and his tour ended at 2:10 a.m. the following day. He stated that the Activity Log does not reflect the 2:00 a.m. car stop, does not indicate that a UF-250 was prepared for the stop, nor does it reflect any of his activities during that tour of duty. He explained that sometimes he conducts so many car stops that if he were to document all stops in his Activity Log he would go through two or three books each week. He further explained that most of the car stops he conducts are just not that important. He stated that he had an independent recollection of stopping Quashie's car, and he did not rely on his Activity Log to form the basis for his memory of the incident. According to Respondent Ashby, he has an independent recollection of many of the hundreds of car stops that he has conducted over the years, although he does not remember all of them. [DX 6 is a copy of Respondent Ashby's Activity Log for the day in question.]

Respondent Ashby reiterated that he did not know where the officers who later arrived at the scene worked. They were dressed in plainclothes. According to Respondent Ashby, at the time every gang unit in the city was assigned to the area of the 67 and 70 Precincts. He stated that the officers never got out of their vehicle. He further stated that the officers checked to see if everything was alright and then drove off. According to Respondent Ashby, the officers did not have any contact with Quashie or Quashie's passengers. Respondent Ashby recalls seeing only one knife in Quashie's car. The knife was the only reason that he ordered everyone out of the car. Respondent Ashby reiterated that he frisked Quashie, and he conceded that preparation of a UF-250 is always required whenever a frisk is conducted. He further reiterated that he did not put

his hands in Quashie's pockets. He stated that he did not observe what Respondent DeJesus was doing on the other side of the car, but he did see him pat down Wiltshire and Peterkin. At no point did Respondent DeJesus indicate that he had located a weapon on either of the passengers, and Respondent Ashby did not see Respondent DeJesus use his hands to go into the pockets of either of the men. Respondent Ashby left the open bottle of alcohol in the car. He stated that there was no indication that Quashie had been drinking.

Respondent Ashby testified that as Respondent DeJesus' supervisor, it is Respondent DeJesus' responsibility to prepare a UF-250 in cases where there has been a stop and frisk. He further testified that it is not his duty, but the duty of the desk officer, to review the UF-250s that Respondent DeJesus prepares. He agreed that the anti-crime team he supervised in the 67 Precinct was "pretty well run," and that they were able to anticipate each other's moves. The officers on his team knew what to do without Respondent Ashby having to constantly tell them. He had confidence in the officers he worked with. Respondent Ashby made lots of arrests with Respondent DeJesus, and he considers him a good worker. Around the time of the incident, there had been a rash of shootings and a robbery pattern in the area.

Respondent Ashby testified that UF-250s are not prepared most of the time for car stops. Similarly, UF-250s are not prepared in cases where an arrest is made. This is because the whole purpose of the UF-250 is to memorialize police contact, and giving a summons or making an arrest memorialize police contact without need for a UF-250. According to Respondent Ashby, a UF-250 is generally prepared when a police officer stops someone that he suspects committed a crime but then lets the person go because he

(the officer) was mistaken. Respondent Ashby continued that a UF-250 is generally not prepared when a police officer conducts a car stop and decides to use discretion and not issue a summons. If the officer who conducts the car stop fears for his safety, he can remove the people from the car and pat them down. Respondent Ashby testified that the stop of Quashie's car, therefore, fell into a gray area when it came to the issue of whether or not a UF-250 should be prepared. Respondent Ashby did not verbally instruct Respondent DeJesus to prepare a UF-250 for Quashie's stop. Although Respondent Ashby had the authority to prepare the UF-250 himself, he does not believe he did so. The person who prepares a UF-250 does not necessarily have to be the same officer who actually conducted the frisk.

On cross-examination, Respondent Ashby testified that he did not specifically ask Respondent DeJesus to not prepare a UF-250 in this case.

Respondent Police Officer Pablo DeJesus

Respondent DeJesus testified that he was working with Respondent Ashby on February 3, 2006. His Activity Log indicates that he conducted a car stop at Flatbush Avenue and Church Avenue during his tour that day. A few months later, he was called in for a CCRB interview. At that point, he learned that an allegation regarding the car stop had been made against him. The CCRB investigator told him about the allegation and showed him photographs of the complainant. Respondent DeJesus stated that he has absolutely no recollection of the incident. He explained that during the period of the incident, he was participating in 20 to 40 stops a night.

Respondent DeJesus testified that during his tour of duty he keeps his shield on a chain that he wears around his neck. He stated that it has always been his practice to take his shield out and leave it over his outermost garment when making a car stop because he wants the person he has stopped to know that he is a police officer. He explained that this is not just for the person being stopped but also for his own safety. According to Respondent DeJesus, if somebody were to ask him for his name, shield number, and command, he would tell that person his name and command and would then hold up his shield to let the person see the number on it. He testified that he has prepared hundreds of UF-250s during the course of his career. He stated that he always prepares one after frisking somebody. According to Respondent DeJesus, when he is working with a sergeant, he defers to the sergeant in terms of what actions to take. He worked with Respondent Ashby for many tours.

On cross-examination, Respondent DeJesus testified that his CCRB interview for this case took place on July 12, 2006. Even at that time he had no recollection of the incident. Respondent DeJesus was shown his Activity Log during the interview. Even though the Activity Log indicated that he conducted a car stop at 2:00 a.m. on February 3, 2006, looking at the log did not jog anything in his memory. Respondent DeJesus stated in the CCRB interview that he did not even recall who he was working with on that day. He also stated in the interview that it was unusual for him to make car stops at Flatbush Avenue and Church Avenue. Respondent DeJesus explained that the location was unusual because it was not really within the confines of the precinct. Respondent Ashby was interviewed by CCRB on August 30, 2006. Respondent DeJesus did not recall if he and Respondent Ashby discussed the case during the period between their

CCRB interviews. According to Respondent DeJesus, he and Respondent Ashby did not discuss the case prior to his interview. In September 2006, Respondent DeJesus was transferred from anti-crime to the detective squad.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82345/06

Respondent DeJesus stands charged with speaking rudely and or/obscenely to Lewis and using excessive force against him. Lewis told CCRB that he was calm and respectful throughout the course of the car stop that culminated in his arrest. According to Lewis, Respondent DeJesus, nevertheless, cursed at him, called him a “little faggot,” punched him in the left side of the face with a closed fist, and took another swing at him that failed to make contact. According to Lewis, the encounter left him with swelling to his face and spitting blood. Seabrook, an eyewitness to the incident, told CCRB that she observed a white officer pull Lewis’ arm, shove him into a Department vehicle, repeatedly instruct him to shut up, and punch him in the face with a closed fist. Ferguson, another eyewitness, testified that she observed a Puerto Rican police officer push Lewis into a Department vehicle and punch him three or four times.

Despite the fact that they were subpoenaed multiple times, neither Lewis nor Seabrook appeared to testify at trial. This means that Respondent DeJesus’ attorney did not have the opportunity to cross-examine them about the details of the encounter. Having Lewis testify in person would have been useful in sorting out the inconsistencies in his CCRB interview. For example, while he claimed that he was calm and respectful,

he also conceded that he was “talking a lot of garbage” and made multiple rude remarks about Respondent DeJesus’ mother. He also told CCRB that his cousins had to repeatedly advise him to be quiet and cooperative. Lewis’ credibility is undermined by the fact that he also initially alleged to IAB that the police damaged the car that he was driving that day. Donovan, the CCRB investigator on the case, testified that this charge was ultimately dropped because no corroboration of damage could be produced.

Moreover, at the time of trial, Lewis was the subject of an active bench warrant for assault. Because of the doubt that this casts on Lewis’ character, having him appear at trial would have been particularly beneficial. Similarly, having Seabrook testify in person would have been useful in clarifying some of the confusion that she conveyed in her CCRB interview. While Seabrook told CCRB that Lewis was completely cooperative, she conceded that she was not looking closely because everything happened so fast and she was trying to pull the children in the car away from the scene. The fact that Seabrook was not closely observing Respondent DeJesus’ actions is made obvious by the fact that she was not even certain whether she was observing the Hispanic officer or one of the white officers. Based on the foregoing, the Court considers the hearsay statements offered by the Department to be of limited evidentiary value.

Although Ferguson was present at trial, the evidentiary value of her testimony is, at best, only slightly greater. This is because, as she conceded, she was too far from the encounter to hear anything that was said, and her view of the encounter was blocked by the car. Furthermore, she testified that she was too far away to see any of the officers’ faces, she could not positively identify Respondent DeJesus as the Puerto Rican officer who used force against Lewis, and she could not recall the height or weight of that

officer. In addition, whatever she believed happened to Lewis while in the Department vehicle would have occurred, according to both Respondents, behind tinted windows.

In contrast to the Department's witnesses, Respondent Ashby and Respondent DeJesus consistently and credibly testified that Lewis was belligerent from the start. According to Respondent Ashby, Lewis was cursing, screaming, acting boisterous, and gesturing with his arms. According to Respondent DeJesus, Lewis was cursing, acting irate, and flailed his hands a couple of times when he saw the handcuffs. This version of the incident is consistent with Ferguson's testimony that it looked like the people across the street were having an animated conversation. Both Respondent Ashby and Respondent DeJesus further testified that as Respondent DeJesus placed Lewis in the Department vehicle, Lewis pushed off of the floorboard with his foot, pushing his body backward. In response, Respondent DeJesus placed his hand on Lewis' shoulder and pushed him down inside the car. The Court can imagine how this portion of the encounter might have looked like excessive force to a civilian spectator who was not paying close attention (such as Seabrook) or had an obstructed view (such as Ferguson). Respondent DeJesus testified that after he placed Lewis in the car, he reached around Lewis to remove flashlights, Activity Logs, and bottles of water that were in the backseat. This action could explain the hitting motion and three to four punches that Ferguson believed she saw from across the street. When Lewis started talking about Respondent DeJesus' mother, Respondent Ashby told Respondent DeJesus to walk away. Respondent Ashby explained that because Respondent DeJesus' mother was sick and in the hospital at the time, his mother was a sensitive subject. Respondent DeJesus drove back to the command in the other car and had no further contact with Lewis. At no point

during the incident, according to both Respondent Ashby and Respondent DeJesus, did Respondent DeJesus ever strike, punch, or use profanity with Lewis. Respondent Ashby and Respondent DeJesus were standing next to each other the entire time. Moreover, Respondent Ashby's credibility is bolstered by the fact that he notified his Integrity Control Officer and IAB about Lewis' allegation of assault immediately upon his return to the command. This is typically not the act of a member of the service attempting to cover up misconduct.

The medical evidence is also consistent with the version of the incident provided by Respondent Ashby and Respondent DeJesus. First, Respondent Ashby noted in the Command Log that Lewis' condition was "apparently normal." Presumably, the desk officer who was responsible for maintaining the log was right there to take note if this entry was inaccurate. Second, the Prehospital Care Report that was prepared by the EMT who transported Lewis to the hospital noted that there was not any bleeding, swelling, pain to the touch, disfigurement, or abnormal movement to Lewis' cheek or jaw. Third, the IAB investigator who visited Lewis at the hospital on the night of the incident noted in his report that he did not observe any injuries on Lewis. Fourth, although the doctor at Kings County Hospital noted in the medical records that Lewis did have an abrasion in the oral mucosal membrane and an abrasion on his right arm, the only treatment that Lewis received was a prescription for Motrin. This minimal treatment is more consistent with the level of force described by Respondent DeJesus (forcibly placing a resistant Lewis inside the car) than the force described by Lewis and his witnesses (one or more closed-fisted punches to the face).

Based on the foregoing, this Court finds that the Department failed to prove by a preponderance of the credible evidence that Respondent DeJesus spoke discourteously to Lewis or used any more force than was necessary to situate Lewis in the backseat of a Department vehicle. Thus, Respondent DeJesus is found Not Guilty.

Disciplinary Case Nos. 83136/07 & 83137/07

Specification Nos. 1 and 3

The Respondents stands charged with searching Quashie and Wiltshire without sufficient legal authority and failing to provide their name and/or shield numbers upon request. Respondent Ashby testified that when he stopped Quashie's car, he saw a knife in between the two front seats. According to Respondent Ashby, he and Respondent DeJesus proceeded to remove Quashie, Wiltshire, and Peterkin from the car and frisk them. Respondent Ashby stated that he did not search Quashie's pockets, and he did not see Respondent DeJesus search the pockets of either of the other two men. He further stated that at no point during the encounter did anyone ask him for his name or shield number. Respondent DeJesus testified that he had no recollection of Quashie's car stop. This is understandable, given the fact that he was participating in 20 to 40 car stops a night during that period, and this specific stop did not culminate in any sort of enforcement action.

In contrast to Respondent Ashby's rendition of the incident, Quashie and Wiltshire told CCRB that the Respondents searched their pockets. Quashie also told CCRB that when he asked the white officer for his shield number, the officer ignored him. Wiltshire similarly told CCRB that when he asked the black officer where he

worked and for his name and shield number, all that the black officer did was show him the shield around his neck.

Despite the fact that they were subpoenaed multiple times, neither Quashie nor Wiltshire appeared to testify at trial. Bromirski, a CCRB supervisor, testified that the two complainants also failed to respond to the case investigator's many requests that they come in for a photo array and refused to meet with members of the Brooklyn South Investigations Unit. Even the Advocate described the complainants as "at the very least, reluctant . . . and perhaps totally uncooperative." While hearsay is admissible in this forum, it cannot without any sort of corroboration justify conviction. This is especially true in a case such as this where the complainants, after making their initial statements to CCRB, failed to cooperate with all follow-up investigatory steps. This failure to cooperate leads this Court to believe that Quashie and Wiltshire simply did not consider their allegations valid enough to pursue. Furthermore, by failing to testify at trial, the complainants leave the Court with a cold record of their CCRB statements without the benefit of examining their demeanors as they testify under oath or of hearing their statements scrutinized on cross-examination.

Because all that the Department could provide for these two Specifications was the uncorroborated out-of-court statements of two uncooperative complainants, the Court finds that it failed to prove the alleged misconduct by a preponderance of the credible evidence. Accordingly, the Respondents are found Not Guilty.

Specification No. 2

The Respondents stand charged with failing to prepare Stop, Question, and Frisk Reports. Unlike the other charges in this case, this allegation has evidentiary support. It

is supported by the fact that the Department was unable to find any record of UF-250s ever being prepared for Quashie's stop. The CCRB investigator on this case requested copies from the 67 Precinct and 70 Precinct of any UF-250s prepared for Quashie, Wiltshire, or Peterkin. In addition, he asked the two precincts for copies of their Stop, Question, and Frisk Logs for the day of the incident. Neither of these requests resulted in the production of any evidence to indicate that UF-250s were prepared by the Respondents that day.

According to Respondent Ashby, UF-250s are not prepared most of the time for car stops, and the stop of Quashie's car fell into a gray area when it came to the issue of whether or not UF-250s should be prepared. This is simply not true. Respondent Ashby testified that he removed Quashie from the car and frisked him. He further testified that Wiltshire and Peterkin were also removed from the car, and he observed Respondent DeJesus frisk them. Although the complainants told CCRB that it was, in fact, Respondent DeJesus who frisked Quashie and Respondent Ashby who frisked Wiltshire, it went uncontested at trial that the Respondents removed three men from a vehicle and proceeded to frisk them. Because the incident did not result in arrest or the issuance of a summons, UF-250s should have been prepared to document the encounter.

Respondent Ashby's attorney claimed in his summation that it was not Respondent Ashby's responsibility to prepare a UF-250 because he is a supervisor. While it is certainly true that Respondent Ashby could have had Respondent DeJesus prepare a UF-250 on his behalf, Respondent DeJesus would have been unable to do so unless Respondent Ashby first shared with him the pedigree information for the person that he had frisked (whether that person was Quashie or Wiltshire). Because there is no

indication that Respondent Ashby gave this information to Respondent DeJesus, Respondent Ashby could not have reasonably assumed that Respondent DeJesus prepared a UF-250 for him.

Another defense raised at trial was that the system for recording UF-250s was unreliable during the period of the incident, and it was possible that UF-250s prepared by the Respondents got lost. This is an inadequate defense. The Stop, Question, and Frisk Logs for the 67 and 70 Precincts show that, in total, 67 UF-250s were prepared on the day of the incident. Clearly, there were UF-250s being successfully processed in these two precincts at the time, and it seems highly unlikely that all three UF-250s that the Respondents should have prepared for Quashie's car stop got lost in the system. This conclusion is supported by the fact that the Respondents' testimonies were, to say the least, vague on the matter of whether or not UF-250s were prepared in the first place.

Based on the foregoing, the Respondents are found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, the Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent DeJesus was appointed to the Department on June 30, 1995, and Respondent Ashby was appointed to the Department on August 31, 1998. Information from their personnel records that was considered in making their penalty recommendation is contained in the attached confidential memoranda.

The Respondents have been found Guilty, under Disciplinary Case Nos. 83136/07 and 83137/07, of failing to prepare UF-250s, as required. In Disciplinary Case No.

80682/05, a ten-year member with no prior disciplinary record was warned and admonished for failing to provide his name and shield number upon request. In Disciplinary Case No. 78518/03, a 16-year member with no prior disciplinary record was also warned and admonished for the same misconduct. The trial commissioner in that case noted that the Respondent's guilt was mitigated by the fact that the police action the Respondent took against the complainant during the street encounter was otherwise within Department guidelines and did not result in an unjustified or excessively intrusive deprivation of the complainant's liberty. This Court considers the misconduct committed by the Respondents in the current case to be of a comparable magnitude. In addition, the same mitigating factors are present. Accordingly, this Court recommends that Respondent DeJesus and Respondent Ashby be warned and admonished.

Respectfully submitted,

J. Grappone by M. Hargis

John Grappone
Assistant Deputy Commissioner – Trials

