



POLICE DEPARTMENT

September 17, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Lisaura Skladel
Tax Registry No. 941080
Police Service Area 9
Disciplinary Case No. 2014-11571

The above-named member of the Department appeared before me on August 12, 2015, charged with the following:

1. Said Police Officer Lisaura Skladel, on or about April 26, 2013, at approximately 2315 hours, while assigned to Police Service Area 9 and on duty, in the vicinity of [REDACTED], abused her authority as a member of the New York City Police department, in that she stopped Person A without sufficient legal authority.

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

The CCRB was represented by Simone Manigo, Esq., and Respondent was represented by John Tynan, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

EVIDENCE PRESENTED

CCRB did not produce any witnesses at trial; instead, counsel introduced into evidence recordings of two interviews and the accompanying transcripts. Both Person A and Person B were interviewed on May 14, 2013, regarding an alleged unlawful stop of Person A that occurred on April 26, 2013 at approximately 2315 hours in the vicinity of [REDACTED].

According to the Person A interview (CCRB Ex's. 1 & 2), Person A was walking from his home to go check on his grandmother who lived nearby. On the way there, Person A stated he saw three police officers speaking with his cousin Person C, a guy named Person D, and some other people. Person A claimed he stopped about 20 feet away, waiting to talk with his cousin. As Person A was standing there talking on his phone he was approached from behind by Respondent, who was not one of the original three officers with his cousin. According to Person A, Respondent started reaching into his sweater pockets and then grabbed Person A's wrist in an attempt to take his phone from his hand. Person A asked Respondent, who was in uniform, why she was doing that, and Respondent told him to give her the phone. Person A refused, and at that point Lieutenant Neil Zuber rushed over and threw Person A onto a bench, and then proceeded to punch and choke him. Person A insisted that he did not wave his arms or resist in any way. Other officers arrived, and Person A was handcuffed and brought to the precinct, where he was given a Desk Appearance Ticket; a certificate of disposition indicated that on June 13, 2013, the Disorderly Conduct charge against Person A was Adjourned in Contemplation of Dismissal. (CCRB Ex. 5) Person A also stated that after he was brought to the police car, he noticed Person B, his cousin's friend, at the location; however, Person A acknowledged that he didn't

remember seeing Person B as part of the original group that was with his cousin when they were speaking with the police.

Person B, who had a [REDACTED] conviction for Burglary in the First Degree in Kings County, also was interviewed. (CCRB Ex's 3 & 4) Person B essentially corroborated Person A's version of events. He claimed that he, Person A's cousin Person C, and another guy named Person D were just standing in the area talking when they were approached by the police regarding two cups of liquor that were on a nearby gate. They provided police with their identifications and continued talking with the officers. According to Person B, Person A was talking on his phone about 15 feet away from the group when Respondent approached him, told him to get off the phone, and started pushing him toward a bench. The Lieutenant then ran over, threw Person A onto the bench, and the remaining events described by Person A occurred.

Respondent, who was appointed to the Department in January 2006, testified that she was walking through the [REDACTED] on a "conditions" assignment on the night of the incident. The officer was patrolling an area where "people tend to drink, smoke marijuana," and engage in other such quality-of-life violations. (Tr. 20) As she walked into the courtyard, she observed what appeared to her to be four-to-six males stopped by two police officers. The officers were in the process of gathering identifications from the males when Respondent observed Person A, who was part of this group, step back and go behind the officers, and start to walk slowly away from the police. The officers did not appear to realize that Person A was moving away behind them. (Tr. 24-25, 42-44) Respondent insisted that Person A was standing "in the middle of the group" when she first observed him. (Tr. 58)

Respondent acknowledged that at first she wasn't sure why the officers had the males stopped and she could not hear their conversation; she estimated that they were seven or eight car lengths away when she first came on the scene. (Tr. 39) Respondent did, however, notice a few plastic cups in the area, which she suspected might contain alcohol based on her experience patrolling that development. (Tr. 23-24, 50)

Concerned that Person A was attempting to evade the police who had stopped him, Respondent approached Person A and asked him, using a regular conversational tone, to "please do me a favor and go back to that group where you were stopped." (Tr. 29, 51) Respondent testified that she never told Person A that he couldn't leave, and she would have allowed him to walk away if he chose to do so. (Tr. 45) When Person A continued to look at his phone and essentially ignored her, Respondent gently placed her hand on his arm and again asked Person A to return to the group of males with the police. Person A seemed upset, and claimed he wasn't part of the group; Respondent, according to her CCRB interview, replied that she had just seen him walk away, and to get off the phone and get back to the group. (Tr. 29, 51-53, 56) At this point, Person A started acting belligerently: he put his arms up, and started cursing. Respondent stepped back, and Lt. Zuber then rushed over to subdue Person A. (Tr. 30)

After Person A was handcuffed, Respondent walked over to the original group to confer with the officers about their initial stop. One of the officers informed her that the group of males, including Person A, had been stopped for drinking alcohol in public; Respondent learned that Person A "was drinking with the group." (Tr. 32, 49) Respondent stated that she then noticed a bottle of alcohol on the ground in that vicinity. (Tr. 32)

At the precinct, the Lieutenant initially asked Respondent to book Person A for resisting arrest. But after Respondent determined that Person A didn't have any prior convictions or warrants, she decided to give him a desk appearance ticket so he wouldn't have to go through the system. (Tr. 35) Respondent stated that she was later served with lawsuit papers by Person A's attorney, and that lawsuit is still pending. (Tr. 37)

FINDINGS AND ANALYSIS

The touchstone in any evaluation of a street encounter between police and an individual is "objective reasonableness." The question to be answered here is whether a reasonable officer would have acted as Respondent did, in light of the established standards of conduct, and the circumstances actually confronted by the officer in this case. I find that CCRB has not proven that Respondent acted unreasonably here.

CCRB attempted to prove its case through two hearsay statements. Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 AD2d 235, 565 NYS2d 114 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 NY2d 174, 299 NYS2d 194 (1969).

Though these hearsay statements were accepted into evidence, this tribunal does not agree with CCRB's contention that these prior statements should "be afforded as if they were here today." (Tr. 8) The failure of these witnesses to appear deprived counsel for Respondent of the opportunity to confront these witnesses, a vital part of the fact-

finding process. Also, there was no chance for this tribunal to observe her demeanor on the stand. This tribunal did listen to the audio statements of each witness, and they both were generally consistent and steadfast in giving their accounts; however, the absence of any cross-examination dilutes the weight of these statements.

In contrast, Respondent appeared and testified credibly about the incident. She answered questions in a straight-forward and convincing manner. Even her original statement to CCRB back on July 10, 2013 reflects that Respondent told Person A that she had just seen him walking away from the group, suggesting this wasn't just an excuse that she made up at trial to justify her actions during the encounter. One possible inconsistency in her testimony was raised on cross-examination, where Respondent was confronted with her CCRB statement that she "sort of grabbed" Person A's arm after he refused to get off his phone (Tr. 53, 56) And Respondent did display some confusion when asked how many times she asked Person A to return to the group. But otherwise, Respondent's testimony was consistent and logical, and this tribunal credits her account of the incident.

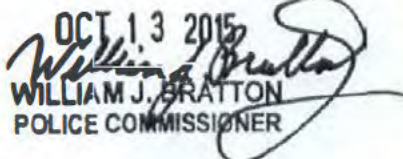
CCRB argues that Respondent's conduct constituted an unlawful, level-3 stop under the DeBour framework, and that the officer lacked reasonable suspicion to make such a stop. However, by the time Respondent arrived at the scene, Person A already appeared to have been stopped by fellow officers, as he was part of the group to whom the officers were speaking and checking identifications. When Respondent observed Person A trying to sneak away from the police, she approached him for the purpose of returning him to the group until whatever police investigation was being done was completed.

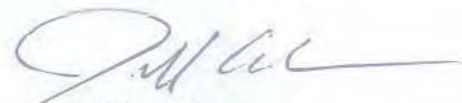
This was not an independent stop by Respondent; rather, it was a reasonable effort to help maintain control of a potentially volatile situation. Her actions in this regard were minimally intrusive, as she first simply asked Person A to return to the group. When he ignored her request, she placed her hand on his arm, and gently tried to coax him back to the original group. That there was a subsequent struggle involving the Lieutenant and Person A does not render Respondent's initial actions inappropriate. Her efforts to try to return Person A to the group were designed to prevent his possible escape, and to give her fellow officers a chance to sort out and safely conclude their police activity.

Respondent's encounter with Person A should not be viewed in a vacuum. Instead, the officer's decision to approach Person A and encourage his return to the group from whence he came must be considered in the context of what preceded it. In evaluating Respondent's conduct, it is important to consider the situation as Respondent came upon it: a group of males had been stopped by police, and one of the males was trying to sneak away. When viewed in that light, this tribunal is not persuaded that there was any misconduct by Respondent that evening. This was less of a stop in the traditional DeBour sense, and more a matter of maintaining control of a police situation where a stop already had occurred. CCRB has failed to prove by a preponderance of the evidence that Respondent's conduct was unreasonable under the totality of these circumstances, and I find her Not Guilty.

Respectfully submitted,

APPROVED

OCT 13 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER



Jeff S. Adler
Assistant Deputy Commissioner - Trials