



POLICE DEPARTMENT

July 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Stacey Ellis  
Tax Registry No. 946968  
73 Precinct  
Disciplinary Case No. 2014-11138  
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The above-named member of the Department appeared before me on April 27, 2015, charged with the following:

1. Said Police Officer Stacey Ellis, on or about December 23, 2012, at approximately 0205 hours, while assigned to 73<sup>rd</sup> Precinct and on duty, in the vicinity of Sutter Avenue and Thomas Boyland Street, Kings County, abused her authority as a member of the New York City Police Department, in that she frisked Kwabee Williams without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Simone Manigo, Esq. Respondent was represented by Craig Hayes, Esq. Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. The CCRB relied upon the hearsay statements of Kwabee Williams. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After evaluating the testimony and evidence presented at the hearing, this tribunal finds Respondent Guilty, in part, of the subject charge.

SUMMARY OF EVIDENCE PRESENTED

The following is a summary of the relevant facts that are undisputed. On December 23, 2012, Respondent was assigned to the 73 Precinct's Anti-Crime Unit. At approximately 0205 hours she was travelling in an unmarked car with three other officers when they stopped Kwabee Williams for a traffic violation as he drove in the vicinity of Sutter Avenue and Thomas S. Boyland Street in Brooklyn.<sup>1</sup> Respondent stood at the rear of the stopped vehicle as two officers approached the driver and passenger side doors to question the driver. One of the officers asked Williams to exit the vehicle and instructed him to wait with Respondent while his vehicle was searched. Williams was not handcuffed or restrained nor was he arrested at that time. Respondent questioned Williams about a bulge in his front pant pocket. As he stood at the back of his vehicle, Respondent frisked Williams. No weapons were found. (Tr. 26, 28-30, 33-34, 36, 38, 41; CCRB Ex. 2A)

FINDINGS AND ANALYSIS

Although a number of complaints were raised in different forums stemming from this police incident, the sole issue here is whether Respondent had sufficient legal authority to frisk Williams during a motor vehicle stop. Patrol Guide Procedure 212-11 defines "frisk" as "(a) running of the hands over the clothing, feeling for a weapon." This Patrol Guide Procedure further states that "a uniformed member of the service" may lawfully "frisk" a person only "if [they] reasonably suspect [they] or others are in danger of physical injury." In making this determination, a tribunal must be careful to assess the factual circumstances known by the police officer at the time. *People v. Medina*, 107

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<sup>1</sup> Williams recalls being stopped on Pitkin Avenue. (CCRB Ex. 2A p. 6)

A.D.2d 302 (1985). Based on her own testimony, I find Respondent guilty, in part, of conducting an improper frisk.<sup>2</sup>

Respondent testified at trial that the driver of the unmarked police vehicle she was in decided to pull over Williams' vehicle for a traffic violation. Once the vehicle was pulled over, she stood at the rear driver's side of the vehicle as her fellow officers interacted with Williams. After approximately five minutes, Williams exited his vehicle and was directed to the back where Respondent was standing. William's vehicle was then searched. As he approached her, Respondent asked Williams if he had anything on him that could hurt her, to which he replied no. She also questioned Williams about a bulge in his front pant pocket. Williams told her that the bulge was his cell phone. Respondent touched the bulge and confirmed that it was a cell phone. (Tr. 29, 31, 33-35, 38)

This tribunal has held that the mere observation of a bulge in a reachable clothing pocket, without more, does not entitle an officer to stop, and much less frisk, an individual. In this case, however, Respondent presented additional information that supports a finding that she acted reasonably when she first touched the visible bulge in Williams' front pocket. The courts acknowledge that car stops are inherently dangerous situations for police officers. *See People v. Robinson*, 74 N.Y.2d 773 (1989); Legal

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<sup>2</sup> Williams filed a claim against the NYPD and the City of New York but did not appear to testify at this trial. Instead, CCRB introduced into evidence Williams' recorded IAB telephone interview, his CCRB interview and his 50-H hearing testimony. (CCRB Exs. 1-3). These hearsay statements focused on a number of complaints including a "search" of his person. During his initial IAB phone call on December 23, 2012, Williams said that as he was watching two officers search his vehicle, "next thing you know, they're searching me or whatever and so forth and they were like, oh, you got guns on you? I'm like no." (CCRB Exs. 1A p. 6-7, 1B). At Williams' 50-H hearing on August 20, 2013, he testified that he was searched during the stop. (CCRB Ex. 3 p. 16). Although it is possible that Williams' references to being searched were actually attempts to describe what was, in fact, a frisk, he did not appear at trial and was not subject to examination to clarify those statements.

Bureau Bulletin, Vol. 20, No. 3. Here, Respondent was credible in her assertion that she was concerned about her own safety and the safety of her fellow officers because the stop took place at 0200 hours about a block away from housing projects designated as a high-crime area. In addition, the interaction between Williams and the officer speaking with him at the front of the vehicle lasted for about five minutes and resulted with Williams exiting the vehicle. These facts gave her "reason to believe that something [was] not what it [was] supposed to be." From experience, she was also concerned about the possibility that people known to Williams might pass by and try to intervene in the vehicle stop. To compound the situation, as Williams approached, she saw a bulge in his pant pocket. Given these circumstances, Respondent had a reasonable basis to believe that her safety might be in jeopardy and her limited frisk of his pant pocket was within the proper exercise of her discretion. (Tr. 30-34, 38)

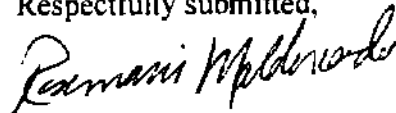
Respondent, however, then continued to frisk Williams' legs, back and chest. It is this part of the frisk that was conducted without legal justification. Respondent admittedly did not see "any other bulges" or anything else indicating that Williams had a weapon on or around any other part of his body. The record is also devoid of any other articulable facts that would support a finding that she reasonably suspected that she or others were in danger of physical injury after confirming that the only bulge she observed was, in fact, Williams' cell phone. Accordingly, I find that the preponderance of the credible evidence established that she lacked sufficient legal authority to extend the frisk. *See Disciplinary Case No. 2013-9621* (Mar. 11, 2015). Thus, Respondent is guilty, in part, of the charged misconduct. (Tr. 36-37, 41)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 8, 2008. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.


Respondent has been found guilty, in part, of frisking Williams without sufficient legal authority. CCRB recommended a penalty of four vacation days for the misconduct alleged. In a similar case, however, a nine-year officer forfeited two vacation days for extending a frisk to a waistband without sufficient legal authority. *Disciplinary Case No. 2013-9621* (Mar. 11, 2015). Accordingly, I find the forfeiture of two vacation days to be consistent with recent precedent and a more appropriate penalty in this case.

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner Trials

**APPROVED**

SEP 22 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER STACEY ELLIS  
TAX REGISTRY NO. 946968  
DISCIPLINARY CASE NO. 2014-11138

Respondent received an overall rating of 4.5 on her 2014 annual performance evaluation and 4.0 on her 2012 and 2013 annual performance evaluations. She has been awarded three medals for Meritorious Police Duty and two medals for Excellent Police Duty. [REDACTED]

[REDACTED] She has no formal disciplinary record.

For your consideration.



Rosemarie Maldonado  
Deputy Commissioner Trials