



POLICE DEPARTMENT

October 7, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Reid Masin
Tax Registry No. 930659
77 Precinct
Disciplinary Case No. 2013-9641

Police Officer Bryan Rothwell
Tax Registry No. 939376
75 Precinct
Disciplinary Case No. 2013-9642

The above-named members of the Department appeared before me on January 16, June 24, and June 27, 2014, charged with the following:

Disciplinary Case No. 2013-9641

1. Said Sergeant Reid Masin, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he wrongfully and without just cause stopped Louis Darville without sufficient legal authority.

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

2. Said Sergeant Reid Masin, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he wrongfully and without just cause frisked Louis Darville without sufficient legal authority.

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

3. Said Sergeant Reid Masin, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he participated in the arrest of Louis Darville. (*As amended*)

P.G. 208-01, Page 1, Paragraph 3 – LAW OF ARREST

4. Said Sergeant Reid Masin, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he caused Louis Darville to be improperly charged with [REDACTED] (As amended)

P.G. 208-03, Page 11 ARRESTS FOR PUBLIC DISPLAY OF MARIHUANA

Disciplinary Case No. 2013-9642

1. Said Police Officer Bryan Rothwell, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he wrongfully and without just cause frisked Louis Darville without sufficient legal authority.

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

2. Said Police Officer Bryan Rothwell, on or about November 29, 2011, at approximately 1240 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the intersection of [REDACTED], abused his authority in that he wrongfully and without just cause searched Louis Darville without sufficient legal authority.

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

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Heather Cook, and Jonathan Darche, Esqs. Respondent Masin was represented by Michael Lacondi and Philip Karasyk, Esqs, on the first day of trial. He represented himself on subsequent trial days. Respondent Rothwell was represented by John Tynan, Esq.

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

DECISION

Disciplinary Case No. 2013-9641

Respondent Masin is found Guilty.

Disciplinary Case No. 2013-9642

Respondent Rothwell is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is undisputed that at approximately 12:30 p.m. on November 29, 2011, Respondent Masin initiated a stop of 19-year-old Louis Darville. Darville was standing on the sidewalk with his back leaning against the fence that surrounds elementary school P.S. 306's playground. Respondent Masin was accompanied by Respondent Rothwell and Police Officer Anthony Lee. All members of the service were in uniform. Both Respondents frisked Darville. Respondent Rothwell also searched a backpack that Darville was wearing on his back. Respondent Rothwell found [REDACTED]

[REDACTED] As a result, [REDACTED]

[REDACTED] The District Attorney's Office ultimately

declined to prosecute because it believed that Respondent Rothwell's search was unlawful. [CCRB Exhibits (CCRBX) 4 and 5 are the complaint and arrest reports, prepared by Respondent Rothwell and approved by Respondent Masin. CCRBX 6 is a decline to prosecute form from the DA's Office.]

The CCRB's Case

The CCRB called Louis Darville as its sole witness.

Louis Darville

Darville is a student and works as a math tutor. He is 6'4" tall and weighs 220 pounds. He attended P.S. 306 as a child. He testified that he was waiting at a bus stop for the B6 bus for about ten minutes when the officers approached him, told him he was loitering and not supposed to be on school grounds. He informed the officers that he was waiting for the bus. He was on his way to Kingsborough Community College. The officers proceeded to ask him questions, but because he was not doing anything wrong he asked why they were questioning him. [CCRBX 1 and 2 are photographs of the area where the incident occurred. They show that the bus stop was located directly outside the schoolyard fence. Darville indicated on CCRBX 1 that he was standing within feet of the bus stop sign.]

One of the officers came behind him, unzipped his backpack (which until that point had been completely shut), and reached a hand inside. Darville asked the officer what he was doing since he had not given permission for a search. Nobody had asked him for permission to search the bag. The search continued until the officer [REDACTED]

██████████. At that point, the officers patted down his pocket area and asked if he had any weapons on him. He was then handcuffed.

At no point did he swing at the officers, attempt to kick them, threaten to harm them, curse at them, indicate that he had a weapon, or reach for his waistband area.

Respondents' Case

Respondents called Police Officer Anthony Lee as a witness and testified in their own behalf.

Police Officer Anthony Lee

Lee, a nine-year member of the Department, is currently assigned to the 75 Precinct. He testified that Respondents exited the vehicle about a minute and a half before he did. When he got out of the car, he saw Respondent Masin in front of Darville and Respondent Rothwell behind him. The officers were speaking to Darville, but he could not hear what they were saying. Darville was being boisterous in that he was speaking "a little higher than normal conversational tone." Darville protested being stopped. Lee heard the officer ask if he could go in the closed backpack, and Darville said that that would be fine. Darville was placed in handcuffs after ██████████ was found in the backpack. Lee did not recall Darville resisting arrest. He never observed Darville "flare" [flail] his hands. He did not see a bulge on Darville. Nothing occurred during the incident to indicate that Darville was armed.

Respondent Rothwell

Respondent Rothwell is a nine-year member of the Department. By November 2011 he had made approximately 300 arrests. He testified that it was Respondent Masin who brought Darville to his attention. Darville was just standing on the sidewalk leaning against the fence. Respondent Rothwell did not at the time notice that Darville was at a bus stop, but he would have probably driven past him had Respondent Masin not pointed him out.

When Respondent Masin said something to Darville, Darville got an angry look on his face. Respondent Rothwell did not recall specifically what Respondent Masin asked Darville. Darville appeared excited and was talking a little louder than usual, though he was not screaming. Respondent Masin was standing about a foot away from Darville. Respondent Masin frisked Darville's waistband, and Respondent Rothwell saw a bulge on Darville's right hip. Believing it could be a weapon, Respondent Rothwell also frisked the bulge. The bulge turned out to be just bunched up fabric. In a March 16, 2012 CCRB interview, Respondent Rothwell stated that the reason he frisked Darville's waist was because weapons are commonly concealed in the waist, Darville was wearing a sweatshirt, and it was possible that Darville had a weapon in that area.

Respondent Rothwell then approached Darville from behind. Respondent Rothwell asked if there was anything in the backpack, and Darville replied negatively. Though there was no indication that the backpack contained a weapon, Respondent Rothwell asked Darville if he could check the backpack. Darville replied with words to the effect of, "No problem, Officer." At that point, Respondent Rothwell squeezed the bottom of the backpack and felt a hard object. The object did not feel like a gun.

Respondent Rothwell asked Darville to remove the backpack, and Darville handed the bag to him. Respondent Rothwell unzipped the backpack and saw [REDACTED]. The hard object turned out to be a book. Respondent Rothwell handcuffed Darville and conducted a field search, which lasted maybe a minute. Darville was not resistant. He never swung at, lunged at, or threatened the officers before the frisk.

Respondent Masin

Respondent Masin, a 12-year member of the Department who was promoted to the rank of lieutenant in September 2013, spent time as the school safety sergeant in the 75 Precinct. He understood from that experience that principals were concerned with the safety of the children going to and from school. There were numerous complaints of students being jumped in and around the vicinity of the schools. He remembered speaking with the principal of P.S. 306 about the housing development across the street being a safety concern to the students. He also knew that P.S. 306 was served by one of the oldest school safety agents. For this reason, he and his school safety team were particularly vigilant when dealing with safety concerns at that location. A common tactic that his team used was enforcing the penal law violation that prohibits loitering on school grounds. Respondent Masin explained that the Patrol Guide defines "school grounds" in two sections as "any building or property within the property line of a public, private or parochial school from elementary up to and including high school or within a thousand feet of the property line of such school." This was the definition that Respondent Masin used when enforcing the loitering law, and it allowed the police to keep known gang members and others with no legitimate purpose away from schools as a tactic to prevent

fights and other violent behavior. [Respondent's Exhibit (RX) A is the results of Respondent Masin's search for "school grounds" on the Department intranet's Patrol Guide. It shows that the term "school grounds" is defined in two Patrol Guide Sections: 208.08 "Fingerprintable and Palmprintable Offenses" (RX B) and 215-10 "Arrest of Juvenile Offender" (RX C). CCRBX 8 is Penal Law Section 240.35, the section on loitering.]

Respondent Masin made the decision to stop Darville on his own. He explained that parents, students, and guests use the front entrance of P.S. 306 when conducting business at the school. Respondent Masin explained that Darville was nowhere near that entrance, and in today's environment of school shootings and violence the police have a duty to investigate and confront people they believe pose a risk to schools and children. While Respondent Masin did not have a clear recollection three years after the incident of exactly where Darville was standing, he knows that he does not stop people just for waiting at a bus stop. He has never received a complaint for stopping someone at a bus stop for no reason. He did not recall seeing a bus stop sign that day. According to his March 29, 2012 statement to CCRB, Respondent Masin observed Darville for less than a minute before approaching him. [CCRBX 7 is a page of the CCRB interview transcript.] Other than standing by the school fence, Respondent Masin did not recall Darville doing anything to raise suspicion.

Respondent Masin asked Darville if he attended the school and basic pedigree questions. If Darville had simply stated that he was waiting for the bus, Respondent Masin would not have taken any further action. But before Respondent Masin could ask Darville what he was doing at the location, Darville became hostile and upset, using his

hands in a manner that made Respondent Masin fear for his safety and the safety of the officers at the scene. In his CCRB interview, Respondent Masin stated that Darville conveyed feelings of being stopped unjustly. [CCRBX 9 is the interview transcript in its entirety.]

At one point, Darville said, "This is fucking bullshit." Respondent Masin told Darville that his behavior was making him fear for his safety. Darville replied, "There are three of you, I should fear for my safety." According to Respondent Masin, a stopped subject who is overly aggressive and combative may be armed with contraband, often a weapon. Darville was acting nervous, and Respondent Masin did not know why. To be safe, Respondent Masin frisked Darville's waistband. Respondent Rothwell assisted in the frisk. In his CCRB interview, Respondent Masin explained that he did not see a bulge or evidence of a weapon at Darville's waistband, but the frisk was based on Darville's actions. Respondent Masin noted that Darville provided no explanation for being on school grounds, it was Respondent Masin's intent at that point to issue him a summons for loitering, and police officers have a right to frisk someone when they are issuing a criminal court summons.

Because Darville was so overly hostile, Respondent Masin became convinced that Darville was preparing to have a violent confrontation with the officers. Darville was much larger than the officers. Respondent Masin experienced tunnel vision, meaning he did not clearly observe things going on around him. He did not hear Respondent Rothwell and Darville discuss a search of the backpack. Nor did he notice Respondent Rothwell searching the backpack. What he remembered was Respondent Rothwell suddenly handcuffing Darville and showing him a bag of what appeared to be [REDACTED]

Though he did not [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He takes full responsibility for this mistake. He has never before had a CCRB complaint substantiated against him.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2013-9641 Specification No. 1

Respondent Masin stands charged with stopping Darville without sufficient legal authority. Respondent Masin testified that he approached Darville because he suspected him of loitering on school grounds. Respondent Masin considered Darville to be on school grounds based on language in Patrol Guide Sections 208-08 and 215-10, which define “school grounds” as anywhere within a thousand feet of a school’s property line.

The problem with Respondent Masin’s reliance on these Patrol Guide Sections is that they define “school grounds” in the context of Penal Law Section 220.00 dealing with controlled substances offenses and Penal Law Section 265.00 dealing with criminal possession of a weapon. In contrast, Penal Law Section 240.35, the section on loitering, makes no mention of a thousand-foot school zone. Even if a thousand-foot zone was incorporated into the loitering law, it certainly would not be applicable to people waiting at a public bus stop located directly outside a schoolyard fence. CCRBX 1 was received in evidence and Darville indicated where he was standing, and it clearly depicts the bus stop. Respondent, a former school safety sergeant in the 75 Precinct, should have been aware of a bus stop outside of the school building.

Respondent Rothwell testified before this Court that he would have probably driven past Darville had Respondent Masin not pointed him out. Respondent Masin observed Darville for less than a minute before approaching him. Other than standing by the school fence, Respondent Masin did not see Darville do anything to raise suspicion. In other words, what Respondent Masin saw was a young man wearing a backpack waiting at a bus stop. There was no reason whatsoever for Respondent Masin to stop Darville. Accordingly, he is found Guilty of this Specification.

Disciplinary Case No. 2013-9641 Specification No. 2
Disciplinary Case No. 2013-9642 – Specification No. 1

Respondents stand charged with frisking Darville without sufficient legal authority. According to Respondent Masin, he did not see a bulge or evidence of a weapon at Darville's waistband, but he initiated a frisk based on Darville's actions. Darville was upset, acted nervous, spoke in a loud voice but was not yelling, protested being stopped and called it "fucking bullshit," and used his hands in a way that made Respondent Masin fear for his safety. There was no claim that Darville ever became physically aggressive or threatened to become violent. If anything, Darville was talking with his hands. Respondent Rothwell assisted in the frisk after he saw a bulge at Darville's hip that turned out to be bunched up fabric.

Given the fact that Respondents stopped Darville for no good reason, it is understandable why Darville would be frustrated and talk animatedly. Respondents failed to articulate factors to support a reasonable belief that Darville might be armed with a weapon. Respondent Rothwell's general statements that perpetrators commonly conceal weapons in their waistbands and that weapons can be concealed in bulky

sweatshirts do not justify the frisk of Darville. Accordingly, Respondents are found Guilty of these Specifications.

Disciplinary Case No. 2013-9642 Specification No. 2

Respondent Rothwell stands charged with searching Darville without sufficient legal authority. It is plain that, apart from Darville's consent, there existed no arguable justification for Respondent Rothwell to search Darville's backpack. While it is in dispute whether Darville gave consent, New York courts have found that once improperly initiated police conduct is established, a directly ensuing consent to search will be deemed invalid as a matter of law. See *People v. Packer*, 49 A.D.3d 184, 188 (2008); *People v. Hollman*, 79 N.Y.2d 181, 194 (1992); *People v. Banks*, 85 N.Y.2d 558, 563 (1995).

We will never know with certainty what, if any, conversation Respondent Rothwell had with Darville about searching the bag. Even if Darville expressed consent, however, it would not have legitimized the search since the encounter was improper from its inception. It was the unlawfulness of the search that required the DA's Office to decline prosecution against Darville. Accordingly, Respondent Rothwell is found Guilty of this Specification.

Disciplinary Case No. 2013-9641 Specification Nos. 3 & 4

Respondent Masin stands charged with abusing his authority in that he participated in the arrest of Darville and caused Darville to be improperly charged [REDACTED]
[REDACTED] As already discussed, Respondents Masin had

no justification for initiating contact with Darville. Even if the [REDACTED] had been discovered as the result of a lawful stop, however, Darville should not have been charged with the [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent Masin initiated the encounter, was the supervising officer on the scene, was present throughout the incident, approved Darville's arrest, and allowed him to be charged with a crime he did not commit. Respondent Masin called this a mistake that he takes responsibility for. Accordingly, he is found Guilty of these Specifications.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Rothwell was appointed to the Department on July 11, 2005. Respondent Masin was appointed on July 1, 2002. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

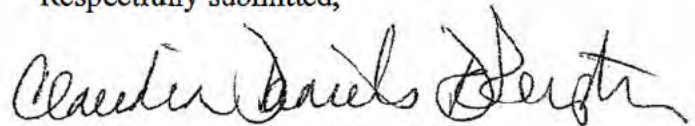
Respondent Rothwell has been found Guilty of frisking and searching Darville without sufficient legal authority. CCRB made a penalty recommendation of the forfeiture of seven vacation days for this case. In *Case No. 2013-9648* (Jun. 17, 2014), a six-year police officer with no prior disciplinary record forfeited eight vacation days for

similar misconduct. The Court, therefore, finds CCRB's recommendation to be quite reasonable.

Respondent Masin has been found Guilty of stopping and frisking Darville without sufficient legal authority. He has also been found Guilty of abusing his authority in that he participated in Darville's arrest and caused Darville to be improperly charged with a misdemeanor. CCRB made a penalty recommendation of 30 vacation days and one year dismissal probation for this case, but the Court considers this unreasonable. In *Case Nos. 2010-912 & 2010-915* (Dec. 7, 2011), an eleven-year officer and six-year officer with no prior disciplinary record each forfeited ten vacation days for stopping the complainant and arresting him for disorderly conduct without having the requisite legal authority to do so and failing to make Activity Log entries about the incident.

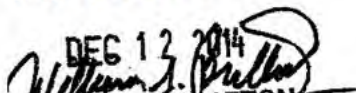
Based on the foregoing, it is recommended that Respondent Rothwell forfeit a penalty of seven vacation days and Respondent Masin forfeit a penalty of 15 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED

DEC 12 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT REID MASIN
TAX REGISTRY NO. 930659
DISCIPLINARY CASE NO. 2013-9641

In 2011 and 2012, Respondent Masin received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 4.5 “Extremely Competent/Highly Competent” in 2010. [REDACTED]
[REDACTED]. He has no prior formal disciplinary record.

For your consideration.

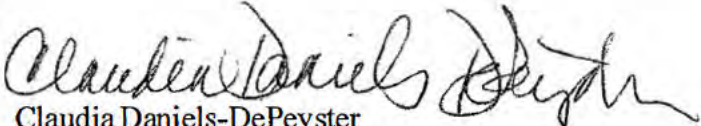
Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BRYAN ROTHWELL
TAX REGISTRY NO. 939376
DISCIPLINARY CASE NO. 2013-9642

Respondent Rothwell received an overall rating of 3.5 “Highly Competent/Competent” on his last three annual performance evaluations. He has been awarded two medals for Excellent Police Duty. [REDACTED]
[REDACTED] He has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials