



POLICE DEPARTMENT CITY OF NEW YORK

May 12, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Arsenio Camilo
Tax Registry No. 938152
Crime Prevention Division
Disciplinary Case No. 2015-13641

Charges and Specifications:

1. Said Lieutenant Arsenio Camilo, on or about April 08, 2014, at approximately 1230 hours, while assigned to the 101st Precinct and on duty, [REDACTED], [REDACTED], abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.
P.G. 212-11 - PAGE 1, PARAGRAPH 1 - STOP AND FRISK
2. Said Lieutenant Arsenio Camilo, on or about April 08, 2014, at approximately 1230 hours, while assigned to the 101st Precinct and on duty, [REDACTED], [REDACTED], abused his authority as a member of the New York City Police Department in that he interfered with Person A's ability to record an incident.
P.G. 208-03 - ARRESTS - GENERAL PROCESSING
3. Said Lieutenant Arsenio Camilo, on or about April 08, 2014, at approximately 1230 hours, while assigned to the 101st Precinct and on duty, [REDACTED], [REDACTED], abused his authority as a member of the New York City Police Department in that he arrested Person A without sufficient legal authority.
P.G. 208-01 (3) - LAW OF ARREST

Appearances:

For CCRB-APU: Nicole Junior, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, NY 10279

Hearing Date:
March 30, 2016

Decision:
Specification 1: Guilty
Specification 2: Guilty
Specification 3: Guilty

Trial Commissioner:
ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 30, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Person A did not appear as a witness. Instead, CCRB called Investigator Luke Petrinovic as a witness, and introduced a previous CCRB interview of Person A as well as video footage recorded by Person A. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of all three specifications.

FINDINGS AND ANALYSIS

On April 8, 2014 at about 1230 hours, Respondent along with two other officers approached Person A, who was standing by himself in front [REDACTED]. As the officers were walking toward him, Person A began recording them with his cell phone. After a brief encounter, Person A was taken into custody and brought to the 101st Precinct.

At issue is whether Respondent stopped Person A without sufficient legal authority, whether he improperly interfered with Person A's efforts to record the encounter, and whether he arrested Person A without sufficient legal authority.

In the days leading up to the trial, CCRB representatives attempted to locate Person A for the purpose of testifying. However, they learned that Person A recently checked himself out of an in-patient facility and they were unable to locate him. Instead, CCRB investigator Luke Petrinovic testified regarding his recorded interview with Person A on May 21, 2014, a copy of which was introduced into evidence (CCRB Ex. 3A) along with the accompanying transcript (CCRB Ex. 3B). Person A also provided to CCRB a copy of his two-minute video footage, which was admitted as well (CCRB Ex. 4). It was stipulated between the parties that Person A has ten prior convictions since 2010, three of which were misdemeanors (petit larceny, trespass, criminal possession of a controlled substance) and the remainder were violations (disorderly conduct, trespass, commercial activity in the transit system). It also was stipulated that Person A had filed a notice of claim to sue the City for \$250,000, though the status of that claim was unknown.

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 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statement of Person A and reviewed the accompanying transcript.

According to Person A's statement, he was standing in front of the building doing nothing illegal when three uniformed officers exited a marked police car and began walking toward him. Person A claimed to have seen the same officers harassing other people in the area earlier that day, so he began recording the officers as they approached. After asking him where he lived, Officer Norcott appeared to recognize Person A as living in the next building. (CCRB Ex. 3B at 4) Norcott asked for identification, which Person A did not have, and then asked if he had any weapons on him. Person A responded that he did not, but Norcott proceeded to pat down his pockets anyway. Person A complained that they had no basis to search him, but the officer continued to frisk him, all the way down to his ankles. (CCRB Ex. 3B at 5, 31)

Person A stated that Respondent was asking his name, but since Person A was focused on Norcott who was frisking him, he didn't answer Respondent. Respondent then grabbed Person A's phone, which Person A quickly snatched back. (CCRB Ex. 3B at 5-6, 32-33) According to Person A, Respondent then told him that he was going to be brought to the precinct to be identified because he was being uncooperative. (CCRB Ex. 3B at 6, 48-49) Person A stopped recording and gave his phone to a friend to preserve the recording. Respondent grabbed Person A's arm and placed him in handcuffs. (CCRB Ex. 3B at 34-35) Person A then went down on the ground to make it difficult for the officers to take him away, but they succeeded in lifting up Person A and taking him to the police car. (CCRB Ex. 3B at 36, 41-42) Person A acknowledged he was getting somewhat loud as he screamed for someone in the gathering crowd to record what the police were doing to him. (CCRB Ex. 3B at 39, 58-59) Person A was brought to the precinct where, after about 30-45 minutes, he was released without being charged. (CCRB Ex. 3B at 9, 60)

Respondent testified that while in his police car, from a distance of about 100 feet away, he observed Person A with what appeared to be a big, rough bulge in his front left pants pocket that

he believed to be a weapon. (Tr. 63, 80) Respondent stated that he did not recognize Person A from that housing development, and thought it suspicious that Person A was standing by himself looking around. (Tr. 82) Respondent's concern was further heightened by his familiarity with the recent violence in that housing area; his review of the last two precinct "Conditions Reports" (Resp. Ex. A) highlighted recent gang violence in the area, and included information on a December 23, 2013 shooting that was still open. (Tr. 57-59) Respondent claimed that he thought Person A resembled the person wanted for that December shooting, though the person in the report was identified as a witness, not a suspect. Also, that person was listed as a male black, age 24, 5'8'', 175 pounds, whereas Person A was a male White Hispanic, age 21, 6'2'', 190 pounds according to the Stop, Question and Frisk report from this incident (CCRB EX. 5). (Tr. 106-109)

Joined by Officers Norcott and Hayes, Respondent approached Person A. Respondent testified that as Officer Norcott was speaking with Person A, Respondent saw Person A reach with his left hand toward his front left pants pocket, where Respondent had seen the bulge. Fearing for his safety and that of his colleagues, Respondent grabbed Person A's left hand to stop him from reaching into his pocket. According to Respondent, Person A became "combative", flailing his arms. The officers were able to grab Person A's hands and put him in handcuffs. Once Person A was restrained, the officers frisked him, felt the hard object, and reached into Person A's pants pocket; that search revealed that the object inside Person A's pocket was an eyeglasses case. (Tr. 63-64, 84- 85) Meanwhile, Person A was not being cooperative and a crowd was beginning to gather, so Respondent decided to remove Person A to a more secure location. Person A, who refused to provide his name, was brought to the precinct where he was charged with disorderly conduct. After Respondent confirmed that Person A was not the person wanted for the December 23 shooting, the arrest was voided and Person A was released. (Tr. 64-66)

It is first alleged that Respondent abused his authority as a member of the NYPD by stopping Person A without sufficient legal authority, in violation of Patrol Guide section 212-11. The Patrol Guide places officers on notice as to their responsibilities during a street encounter with an individual. Section 212-11 provides that an officer may stop and detain a person when the officer “reasonably suspects a person has committed, is committing, or is about to commit a felony or a Penal Law misdemeanor.” The standards of conduct in this area also have been set forth in NYPD form PD 344-153, entitled “Street Encounters – Legal Issues”, which is distributed to all officers, and in the NYPD Legal Bulletin, Vol. 22, No. 2 (August 1992). These legal summaries give officers notice of the four levels of permissible interference with an individual’s liberty, as set forth by the New York Court of Appeals in *People v. DeBour*, 40 NY2d 210 (1976).

Ultimately, the touchstone in any evaluation of a street encounter between police and an individual is 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 Respondent did not act reasonably in this encounter.

Person A denied doing anything that would have justified the police in stopping him. By itself, Person A’s statement to CCRB would have limited probative value with this tribunal, since he did not appear to testify, he has extensive contacts with the criminal justice system, and he initiated a lawsuit to try to collect money in connection with this incident. However, Person A’s statement is essentially corroborated by the video footage, which is a more reliable source as to what occurred that day.

In contrast, Respondent's account is at odds with the video footage in several key respects. For example, Respondent claimed that from a distance of about 100 feet away, he noticed a bulge in Person A's left front pants pocket, which was a primary reason for approaching. That seems like a far distance to make such an observation, and the video confirms that Respondent and his fellow officers exited their police car at a distance from which it is not entirely realistic that they could have observed a bulge in Person A's pants. Moreover, there appears to be no sense of urgency as the officers approach: Norcott and Hayes stroll toward Person A, while Respondent, who is on his cell phone, walks unhurriedly several yards behind them. Further, once the officers reach Person A, Norcott, still without any urgency, can be seen patting him down for weapons. After the frisk, Norcott gives no indication that he believes Person A possesses any such weapon. Indeed, Norcott even tells Person A, "I frisked you to make sure you had no weapons."

As such, Respondent's claim that he believed the bulge in Person A's pants pocket was a weapon, and that he grabbed Person A's hand because he feared that Person A was reaching for that weapon, is not credible. Instead, this tribunal agrees with CCRB that at the point the officers first approached Person A, they at most were justified in making a level-two inquiry. Person A's behavior, namely standing by himself, looking around in a housing area where there had been recent violent crime, did not give rise to reasonable suspicion. Also, this tribunal does not credit Respondent's claim that he believed Person A matched the description of a person wanted in connection with a December shooting that had occurred in the area; as indicated above, that person was listed as a witness, not a suspect, and the description given was not sufficiently similar to Person A's to credit this claim. Under the totality of the circumstances here, Respondent did not have sufficient legal authority to stop Person A, and I find him guilty of Specification 1.

Similarly, the evidence does not support the arrest of Person A was charged with disorderly conduct under subsection 2, which provides, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise." Counsel for CCRB focused her argument on the events captured on video, which led to Person A being handcuffed, and stressed the absence of loud noise. This tribunal agrees, and also is not persuaded that any noise Person A did make during this unlawful stop was done with the intent of causing public inconvenience, annoyance or alarm, or that he recklessly created a risk of that. Rather, based on Person A's statement, as corroborated by the segment of the encounter that was captured on video, it appears that Person A was merely trying to have the police conduct recorded while simultaneously objecting to the incursion. Person A wasn't trying to stir up trouble among the crowd, nor was he recklessly creating a risk that would happen. Even if, as Person A stated, it "got kinda loud" after he stopped recording as he was asking bystanders to record what was happening, he already was being handcuffed by then and his conduct under the circumstances still was not disorderly. As such, the arrest of Person A lacked sufficient legal authority, and I find Respondent guilty of Specification 3.

Regarding Specification 2, CCRB relies on section 208-03 of the Patrol Guide, which provides that subject to safety concerns, an officer should not arrest an onlooker for videotaping a police encounter in a public area. That section appears to be focusing on bystanders, rather than a person stopped by police. However, even if this section isn't directly applicable to the circumstances of this case, there still remains an issue regarding the reasonableness of Respondent's conduct in interfering with Person A's ability to record the incident.

At about the 1:08 mark of the video, it appears that the filming is disrupted for about eight seconds. Person A claimed Respondent grabbed his phone, and that Person A quickly snatched it back. Respondent did not recall who, if anyone, grabbed for the phone. (Tr. 97-98) In any case, the filming was disrupted for those eight seconds, and from the video it appears that Person A was correct that it was at the hands of Respondent. Whether Respondent grabbed the phone, or possibly just pushed it aside, this conduct briefly prevented Person A from recording until he was able to regain control of the phone. Respondent was trying to get Person A to identify himself, but Person A was focused on Officer Norcott, who was patting him down without sufficient legal authority. Respondent appeared to get frustrated with Person A's failure to respond to him, and momentarily interfered with Person A's ability to record the incident. This tribunal is mindful that Person A was able to record most of the encounter and eventually hand his phone to a friend. However, the credible evidence did establish that for a brief segment of that encounter, Respondent unreasonably interfered with Person A's ability to record the incident, and I find him guilty of Specification 2.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB asks that Respondent forfeit twenty (20) vacation days as an appropriate penalty. That recommendation is somewhat excessive. Respondent, a 10-year lieutenant, has been found guilty of all three specifications, for the unlawful stop and arrest of Person A, and for interfering with his ability to record the incident. From the video evidence, Respondent appeared frustrated with Person A's refusal to identify himself, and he and his fellow officers escalated the

encounter to an arrest without sufficient legal authority. Respondent interfered with Person A's ability to record the encounter, though that interference was brief, and Respondent did not stop Person A from handing his phone to a friend. To his credit, Respondent has no prior disciplinary history. However, given his experience as a seasoned officer, this encounter should not have escalated the way it did.

In *Disciplinary Case No. 9641/13* (Dec. 12, 2014), a 12-year lieutenant with no disciplinary history forfeited fifteen (15) vacation days for an unlawful stop, frisk and arrest of an individual who he wrongfully accused of loitering on school grounds. In *Disciplinary Case No. 11070/13* (Feb. 17, 2015), a 20-year police officer with no disciplinary history negotiated a penalty of five (5) vacation days for stopping, frisking, and searching an individual without sufficient legal authority, and for causing said individual to be issued a disorderly conduct summons without sufficient legal authority. After considering the totality of issues and circumstances in this matter, including Respondent's lack of disciplinary history, while also taking into account Respondent's level of responsibility as a lieutenant, I recommend that Respondent forfeit twelve (12) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

JUN 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT ARSENIO CAMILO
TAX REGISTRY NO. 938152
DISCIPLINARY CASE NO. 2015-13641

Respondent was appointed to the Department on July 11, 2005. In his last three performance evaluations, he received 4.0 overall ratings of "Highly Competent" in 2015 and 2014 and a 3.5 rating of "Highly Competent/Competent" in 2013. He has one medal for Excellent Police Duty and one medal for Meritorious Police Duty-Integrity.

Respondent has no prior disciplinary history [REDACTED]

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials