



POLICE DEPARTMENT CITY OF NEW YORK

September 30, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Haynes  
Tax Registry No. 899334  
113<sup>th</sup> Precinct  
Disciplinary Case No. 2015-13976

Police Officer Thomas Skobla  
Tax Registry No. 945316  
113<sup>th</sup> Precinct  
Disciplinary Case No. 2015-13987

Police Officer Yevgeniy Zaytsev  
Tax Registry No. 949825  
113<sup>th</sup> Precinct  
Disciplinary Case No. 2015-13978  
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**Charges and Specifications:**

Disciplinary Case No. 2015-13976

1. Said Police Officer John Haynes, on or about November 20, 2014 at approximately 1900 hours, while assigned to the 113<sup>th</sup> Precinct and on duty, in the vicinity of the 113<sup>th</sup> Precinct, 167-02 Baisley Boulevard, Queens County, abused his authority as a member of the New York City Police Department in that he failed to record and initiate investigation of a complaint from Charles Mann alleging misconduct by uniformed members of service.

P.G. 207-31, Page 1, Paragraph 2 – PROCESSING CIVILIAN COMPLAINTS

Disciplinary Case No. 2015-13987

1. Said Police Officer Thomas Skobla, on or about November 20, 2014, at approximately 1900 hours, while assigned to the 113<sup>th</sup> Precinct and on duty, in the vicinity of Farmers Boulevard and 111<sup>th</sup> Avenue, Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York Police Department, in that he stopped the vehicle driven by Charles Mann without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer Thomas Skobla, on or about November 20, 2014, at approximately 1900 hours, while assigned to the 113<sup>th</sup> Precinct and on duty, in the vicinity of Farmers Boulevard and 111<sup>th</sup> Avenue, Queens County, was discourteous to Charles Mann in that he spoke rudely to Mr. Mann and stated in sum and substance "Unfucking believable, I thought we had him. Unfucking believable".

P.G. 203-10, Page1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

Disciplinary Case No. 2015-13978

1. Said Police Officer Yevgeniy Zaytsev, on or about November 20, 2014, at approximately 1900 hours, while assigned to the 113<sup>th</sup> Precinct and on duty, in the vicinity of Farmers Boulevard and 111<sup>th</sup> Avenue, Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he stopped the vehicle driven by Charles Mann without sufficient legal authority.

P.G. 203-10, Page1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT

**Appearances:**

For CCRB-APU: Cindy Horowitz, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

For the Respondents John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street-Suite 640  
New York, NY 10038

**Hearing Dates:**

June 20, and 27, 2016

**Decision:**

Not Guilty.

**Trial Commissioner:**

ADCT Paul M. Gamble

## REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 20 and 27, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB called Charles Mann as a witness. Respondents testified on their 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 Respondents Haynes, Skobla and Zaytsev Not Guilty of the charged misconduct.

## FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute.

On November 20, 2014, at approximately 1900 hours, Charles Mann, a retired N.Y.C. Department of Corrections Officer and contract employee of the U.S. Department of Homeland Security, was driving northbound on Farmers Boulevard in Saint Albans, New York. Somewhere near the intersection of Farmers Boulevard and 111<sup>th</sup> Avenue, Mann noticed the flashing lights of a police car in his rear view mirror. Mann pulled his silver 2009 Range Rover Sport to the curb and came to a stop. Respondents Yevgeniy Zaytsev and Thomas Skobla, assigned to uniformed patrol duty in the 113<sup>th</sup> Precinct, emerged from their police car and approached Mann's vehicle. Respondents and Mann had an encounter, the circumstances of which are in dispute. At the conclusion of the encounter, Mann was permitted to depart without any summonses being issued.

After the stop, Mann proceeded to the 105<sup>th</sup> Precinct with the intention of making a complaint about Respondents' conduct. He subsequently elected to proceed to the 113<sup>th</sup>

Precinct to file a complaint, where he encountered Respondent Haynes and had a discussion, the facts of which are in dispute.

The issues in this case are: (1) whether Respondents Zaytsev and Skobla stopped Mann's vehicle without sufficient legal authority; (2) whether Respondent Skobla was discourteous to Mann; and (3) whether Respondent Haynes failed to record and initiate a complaint, as it was his obligation to do.

I find that Respondents Zaytsev and Skobla conducted a traffic stop of Mann's vehicle which was supported by probable cause to believe that he had failed to stop at a red traffic signal, a violation of the Vehicle and Traffic Law. I further find that CCRB has failed to meet their burden of proof with respect to the specification charging Respondent Skobla with speaking to Mann in a discourteous manner. Finally, I find that Respondent Haynes' response to Mann's request for assistance in filing a complaint met the requirements of the Patrol Guide.

The following is a summary of the disputed facts in this case.

Mann testified that as he drove on Farmers Boulevard, he committed no traffic infractions (T. 19-20). As he drove through the vicinity of Farmers Boulevard and 111<sup>th</sup> Avenue, he observed a police car and its flashing lights two cars behind him (T. 20). Mann also noticed that there were two cars between his car and the police car (T. 21). As he observed the two cars behind him pull over to the right, he did so as well (Id.). Mann indicated on CCRB Exhibit 1 a point just past the intersection of Farmers Boulevard and 111<sup>th</sup> Avenue as the point where he was stopped. Mann testified further that four police officers exited the marked police vehicle and approached his car (T. 23). Two of the police officers remained at the rear of his car, while Respondents approached the front driver and passenger sides (T. 24).



Mann testified further that Respondent Skobla, who was positioned at the front passenger door, addressed him in a nasty tone, telling Mann to roll down his window and turn off the engine (T. 25). Respondent Zaytsev, positioned at the driver's door, asked Mann for his license and registration (T. 27). Respondent Skobla then asked him about a "law enforcement" jacket which was resting on his rear seat (T. 28). Mann replied that it was from his security job with [REDACTED] (Id.). Mann told Respondent Zaytsev that he was going to reach into the center console of his vehicle for his license and registration. Mann did so and removed a shield case, which he described as being large (T. 31). The shield case contained Mann's Homeland Security identification, his concealed weapons permit, his driver's license, his N.Y.C. Corrections identification and other cards (Id.). Respondent Skobla asked Mann if he had a weapon, to which Mann responded "Yes, but not on me" (T. 31-32). Mann handed Respondent Zaytsev his driver's license, his Homeland Security identification, his concealed weapons permit and his Corrections identification (T. 31). While Mann admitted to possessing a retired Corrections shield, which he kept in his shield case, he denied showing his shield to Respondent Zaytsev (T. 64). Mann further acknowledged the practice of "tinning" as a display of a law enforcement shield with the expectation of receiving something in exchange (Id.). Mann admitted that once he removed two rubber bands from his shield case, his retired Corrections shield was readily observable (T. 65).

As Respondent Zaytsev examined Mann's documents, Respondent Skobla stated, "Fucking unbelievable, this guy's got a gun; I thought we had one" (T. 31-32, 38). Mann responded, "You thought you had one?" to which Respondent Skobla replied, apparently directing his comment to Respondent Zaytsev, "I thought we had one. I thought we had a collar" (T. 38). Mann described the encounter as lasting 5-10 minutes (Id.). Respondent

Zaytsev eventually returned Mann's documents to him and ended the encounter by returning to his police car (T. 39).

Mann testified that he then drove to the 105<sup>th</sup> Precinct to make a complaint about Respondents' conduct during the stop (T. 39). Mann approached a police officer seated at the desk and informed him of the circumstances of his car stop; according to Mann, the officer walked over to the Desk Sergeant, spoke to him and then laughed (T. 40). Mann waited for a time but received no assistance, so he contacted a friend who advised him to speak with a Community Affairs officer assigned to the precinct (Id.). Mann eventually spoke with that officer who advised him that no one working at the precinct matched the descriptions of the police officers he provided and that the location of the car stop was within the 113<sup>th</sup> Precinct, not the 105<sup>th</sup> (Id.).

Mann testified further that he proceeded to the 113<sup>th</sup> Precinct, where he approached a civilian employee, expressed his desire to make a complaint regarding Respondents' conduct, and eventually had a discussion with Respondent Haynes. According to Mann, when he informed Respondent Haynes that he believed he had been stopped for no apparent reason, Respondent Haynes replied, "You think you're the only black person in this neighborhood to get pulled over because you're driving a nice vehicle?" (T. 42). Respondent Haynes continued, "We pulled over rappers such as LL Cool J, 50 Cent, and so on. We pulled over Mercedes-Benz and BMWs" (T. 43). Mann replied, "I am a retired member of the service and I didn't feel it was right" (Id.). Respondent Haynes pointed to a wall where a telephone number for CCRB appeared and told Mann, "Call the number on the wall" (T. 43-44).

Respondent Zaytsev testified that at approximately 1900 hours on November 20, 2014, he was on uniformed patrol duty with Respondent Skobla (T. 102). There were no

other police officers riding with them in their police car (Id.). At about that time, he observed a silver Range Rover cross the intersection at Farmers Boulevard and 111<sup>th</sup> Avenue through a red light without stopping (T. 103). Respondent Zaytsev activated his lights and siren in order to effect a traffic stop of the aforementioned vehicle (Id.). Both Mann's car and Respondent Zaytsev's police car came to a stop and Zaytsev exited. As he presented himself at the driver's window, Mann informed him that he was a retired Corrections officer and that he had a firearm on his right side (T. 104). Respondent Zaytsev asked Mann for identification, Mann's concealed weapons permit or his retired Department of Corrections identification (Id.). Mann then showed Respondent Zaytsev his shield, which caused Zaytsev to respond, "Sir, I asked you for your driver's license and your concealed carry permit for your weapon" (T. 105). Mann responded, "How come my shield isn't good enough, it always was good enough" (Id.). Respondent Zaytsev replied, "As a police officer, I still do identify myself with an ID, not a shield when I get pulled over. At that point, I see you are retired. I need to see your permit for this firearm" (T. 106). After requesting the documents from Mann two to three additional times, Mann retrieved his Corrections ID, confirming his retired status, as well as his concealed weapons permit, then handed them both to Respondent Zaytsev (T. 107). When Zaytsev confirmed that all of the identifying data matched, he returned the documents to Mann and "wished him a nice day" (Id.).

Respondent Skobla testified that while he was on uniformed patrol duty with Respondent Zaytsev on November 20, 2014, at approximately 1900 hours, he had no recollection of participating in a car stop involving Mann (T. 137-138). Respondent Skobla testified further that he reviewed his memo book entries for that day and had no notations regarding the car stop (T. 138).

Respondent Haynes testified that he was on duty at the 113<sup>th</sup> Precinct on November 20, 2014, at approximately 1900 hours, assigned as the Auxiliary Police coordinator (T. 147). When questioned about his responsibilities when confronted by a civilian wishing to make a complaint, Respondent Haynes stated that his obligation was to provide the civilian the appropriate form to complete, then advise the Desk Officer that the civilian was in the precinct to make a complaint (T. 149). The civilian, after completing and signing the form, would be permitted to proceed to the complaint room ("124 room"), where a civilian aide would enter the data on the form onto a computer (Id.).

At about 1900 hours, as Respondent Haynes was walking from the complaint room, he observed Mann in conversation with the Telephone Switchboard Operator for that tour, who was a civilian (T. 151). At that time, Mann gestured to Respondent Haynes and asked to speak with him (T. 152). Respondent Haynes believed he was the closest uniformed member to the telephone switchboard operator at that time (Id.). Mann advised Respondent Haynes that he had been "profiled" and stopped by uniformed personnel (Id.). After listening to Mann's narrative, Respondent Haynes explained to him that he did not believe the stop resulted from profiling but Mann nevertheless asked to file a civilian complaint (T. 153). Respondent Haynes told Mann to "Hold on while I get the forms" and pointed to a CCRB notice on the wall advising him that he could also make a complaint by telephone or e-mail; in addition, he had the option of going into the "124" room and having a Police Administrative Aide type the complaint for him (T. 153-155). Respondent Haynes advised the civilian assigned to the switchboard that Mann was at the precinct to make a civilian complaint and that the civilian should notify a supervisor after Mann completed the complaint form (T. 154, 158). Respondent Haynes



testified that he returned to his duties at that point and had no further contact with Mann (Id.).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1<sup>st</sup> Dep't 1994]).

Any allegation that a citizen has been subjected to unlawful, discourteous or dismissive treatment by members of this Department on the basis of his race calls into question the integrity of the institution.

The only evidence offered in support of the charges in this case is Mann's testimony. His testimony is irreconcilable with Respondent Zaytsev's testimony regarding the circumstances of the car stop. I do not credit Mann's testimony because it was illogical; contradicted by other credible evidence in the case; and self-serving. His demeanor at trial was diffident and hesitant. In contrast, the testimonies of Respondents Zaytsev, Skobla and Haynes, viewed individually and in the aggregate, strike the tribunal as logical, unremarkable and bearing the ring of truth.

Giving credit to Mann's assertion that he is a duly retired Department of Corrections officer and, as such, has a permit to carry a weapon, whether Mann actually had a firearm in his possession that evening becomes material only with respect to his credibility. Although he denied having a firearm that day, the statement he attributes to Respondent Skobla, "Unfucking believable, he had a gun," would only make sense if Mann possessed a firearm at the time of the stop.

Mann further asserted that he handed Respondent Zaytsev, among other documents, his concealed weapons permit. Respondent Zaytsev asserted that he requested Mann's concealed weapons permit after Mann declared to him that he was a retired Corrections officer and that he was armed. It makes no sense that Mann would proffer a concealed weapons permit if he did not have a weapon in his possession. This denial, as well as Mann's testimony that Respondent Skobla asked, "do you have a gun in the car?" in the context of the entire record, seem more likely after-the-fact embellishments.

Finally, Mann asserted that he had not committed any traffic infractions prior to his encounter with Respondents, denying a litany of possible justifications for a vehicle stop. Mann denied having tinted windows or having any defective equipment on his vehicle. For example, Mann asserted that his vehicle was fully operational; that he was wearing his seat belt; and that he was driving within the speed limit. It is noteworthy that Mann made no factual assertions whatsoever regarding the traffic signal at the intersection of Farmers Boulevard and 111<sup>th</sup> Avenue.

Respondent Zaytsev credibly asserted that he observed Mann drive through a red signal without stopping. The tribunal takes judicial notice of the existence of a traffic signal at that intersection at that time (Court Exhibit 1). Accordingly, I find Respondent Zaytsev's assertion that Mann drove through a red light credible. Based upon that finding, I further find that Mann shaded his testimony to omit any mention of the traffic light and his failure to obey a red signal in an effort to support a version of events which painted him as the victim of an unjustified vehicle stop. Thus, I find Mann to be an unreliable witness.

Respondent Zaytsev described a traffic stop in which the driver failed to stop at a red light but asserted that he was a retired Corrections officer who happened to be armed at the time of the encounter. It is customary that a retired member of law enforcement, upon being stopped for a traffic infraction, would identify himself as such and would further alert the investigating officer to his possession of a firearm, for the safety of both individuals. It is also logical that, once Respondent Zaytsev confirmed that Mann was, in fact, a retired Corrections officer and that he did possess lawful authority to carry a weapon, that Respondent Zaytsev did not pursue the matter further.

Respondent Zaytsev did not testify that he observed any aggravating circumstances to Mann's traffic infraction, such as coming to a full stop, then proceeding through the red light; striking a vehicle or pedestrian after running the light; or running the light while under the influence of alcohol or drugs. Common sense suggests that most red light infractions involve a motorist proceeding through a traffic signal as it changes from yellow to red, which necessarily involves subjective judgments regarding the driver's hand-eye coordination, speed of the vehicle and the available stopping distance. Under these circumstances, Respondent Zaytsev's decision to forego the issuance of a traffic summons was not an abuse of his discretion.

I further credit Respondent Zaytsev's testimony that Mann displayed his shield and that he further expressed disappointment that the simple proffer of the shield was not sufficient to prevent Respondent Zaytsev from requesting any further proof of his identity and retired status. Respondent Zaytsev's assertions are supported by Mann's own testimony, as well as his demeanor at trial.

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*Stop Without Sufficient Legal Authority*

I find that during their tour of duty on November 20, 2014, Respondent Zaytsev was the operator and Respondent Skobla was the recorder. As set forth above, I find that Respondent Zaytsev stopped Mann's vehicle after observing it drive through the intersection of Farmers Boulevard and 111<sup>th</sup> Avenue against a steady red signal. This action violated section 1111(d)(1) of the Vehicle and Traffic Law and gave Respondent Zaytsev probable cause to temporarily detain Mann for further investigation of such infraction or the issuance of a summons (*People v. Guthrie*, 25 NY3d 130, 133 [2015]). Accordingly, I find Respondent Zaytsev and Respondent Skobla Not Guilty of this charge.

Disciplinary Case No. 2015-13976

*Failure to Record and Initiate Investigation of a Complaint*

Complaints against uniformed members of the service may be made at any patrol precinct, patrol service area, transit district, traffic unit, Internal Affairs Bureau, or any other office of the Department, including the Office of the Police Commissioner or office of a deputy commissioner (P.G. 207-31). The Patrol Guide requires officers who learn that a civilian wishes to make a complaint to advise them that the complaint may be made in person, taken over the telephone, or sent by mail to any of the Department offices set forth above. In addition, the complainant must be provided with the toll-free number for the Civilian Complaint Review Board (Id.). If the complainant wishes to make the complaint in person, the police officer must provide him a Civilian Complaint Report (PD313-154) to be completed in his own handwriting (Id.). Finally, the Patrol Guide requires that when a member of the service receives a request for a Civilian Complaint Report, the Desk Officer must be advised and a Command Log entry made immediately (Id.). It is undisputed that Mann left the 113<sup>th</sup> Precinct without filing a complaint.

Furthermore, there is no evidence in the record with respect to Command Log entries regarding Mann's request for assistance in making a complaint being made at either the 105<sup>th</sup> or 113<sup>th</sup> Precincts, or both

There is no dispute that Mann had a conversation with Respondent Haynes at the 113<sup>th</sup> Precinct but their respective testimonies regarding the substance of the exchange are irreconcilable. Mann's description of the encounter suggests a brief, dismissive conversation in which Respondent Haynes attempted to belittle Mann and scoff at his claim of unjust treatment. Respondent Haynes' testimony, in contrast, delineated the options he offered Mann, including an offer to have a Police Administrative Aide type a complaint for him.

On the date of this incident, Respondent Haynes was a 23-year veteran of this Department. I have had the opportunity to assess his trial demeanor, as well as the substance of his testimony and find him to be a credible witness. Respondent Haynes' testimony describing the conversation he had with Mann was concise and logical. The manner in which he dealt with Mann's complaint was consistent with the procedure set forth in Patrol Guide 207-31 and further consistent with his testimony regarding what he believed his obligations under the Patrol Guide to be. It was not Respondent Haynes' job to weigh the merits of Mann's complaint but to courteously and explicitly respond to the request for assistance he received. Based upon the credible evidence in the record, it appears he attempted to assist Mann, though it was not explicitly his obligation to do so. The evidence further supports a finding that Respondent Haynes attempted to re-direct the police response to Mann's inquiry to the Telephone Switchboard Operator, whose duty it was to deal with the public. To the extent that Respondent Haynes may have communicated his own belief regarding the nature of the interaction Mann described to



him. Respondent Haynes went beyond what was appropriate in such a circumstance but in the view of the tribunal, such behavior does not constitute misconduct.

Mann, on the other hand, appeared crestfallen at trial. His testimony that he "was a retired member of the Service and it just wasn't right" fairly describes this tribunal's observation of his trial demeanor. There can be no doubt that the interaction he had with Respondents Zaytsev and Skobla was tainted by entitlement. After Mann's first attempt at making a complaint was unsuccessful, it is understandable that his state of mind by the time he encountered Respondent Haynes was that of frustration. Accordingly, it is more likely than not Mann's state of mind by the time he encountered Respondent Haynes did not allow for nuance; Respondent Haynes was either for him or against him. It is important to note that Mann admitted he left the 113<sup>th</sup> Precinct without filing a complaint; there is no credible evidence to support a finding that Respondent Haynes refused to process a complaint. Given that context, Respondent Haynes' version of the events seems more plausible; therefore, I find him Not Guilty of this charge.

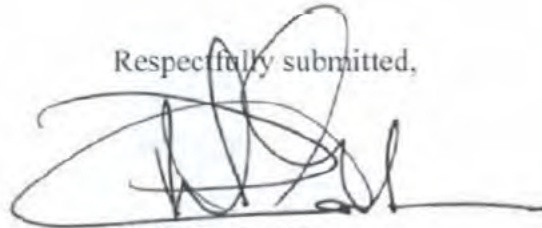
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*Discourtesy*

Mann alleged that Respondent Skobla spoke to him in a nasty manner and was arrogant. More specifically, Mann alleged that Respondent Skobla exclaimed, "Unfucking believable; he had a gun. I thought we had one." Based upon my finding that Mann's testimony is unreliable, there is insufficient evidence to support a finding by a preponderance of the credible, relevant evidence that Respondent Skobla made such an exclamation which, if actually uttered, would have indeed been discourteous. Even assuming, for the sake of argument, that Skobla's tone in ordering Mann to roll down his window and turn off the engine was "nasty and arrogant," those characterizations,

without more, are so subjective that they could not reasonably form the basis of a factual finding of discourtesy by this tribunal. Based upon the foregoing, I find Respondent Skobla Not Guilty of this charge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', with a long horizontal line extending to the right.

Paul M. Gamble  
Assistant Deputy Commissioner Trials

**APPROVED**

DEC 19 2016

A handwritten signature in blue ink, appearing to read 'James P. O'Neill', written over the printed name.

JAMES P. O'NEILL  
POLICE COMMISSIONER