



POLICE DEPARTMENT CITY OF NEW YORK

December 14, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Amjad Kasaji
Tax Registry No. 939768
Gang Squad Brooklyn North
Disciplinary Case No. 2014-12744

Charges and Specifications:

1. Said Detective Amjad Kasaji, on or about June 6, 2013, while assigned to Gang Squad Brooklyn North, while on duty at approximately 0040 hours, in the vicinity of 290 Mother Gaston Boulevard, Kings County, did engage in conduct prejudicial to the good order, efficiency and discipline of the New York City Police Department in that said Detective did abuse his authority as a member of the NYPD by searching Mr. Dayquan Moultrie without sufficient legal justification, to wit: said Detective did remove Mr. Moultrie's shoes.

P.G. 212-11, Page1, STOP AND FRISK

P.G. 203-10, Page1, Paragraph 5 – CONDUCT PREJUDICIAL

Appearances:

For Department Advocate's Office: Samuel Yee, Esq.

For Respondent: Michael Lacondi, Esq.

Hearing Date:

November 13, 2015

Decision:

Not Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 13, 2015. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Dayquan Moultrie as a witness. Respondent called Sergeant Miguel Marte as a witness and 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 Not Guilty of the charged misconduct.

FINDING AND ANALYSIS

It is undisputed that on June 6, 2013, at approximately 12:40 A.M., Dayquan Moultrie was walking in the vicinity of a New York City Housing Authority located at 290 Mother Gaston Boulevard in Brooklyn. Respondent was on duty at that time and was assigned to Gang Squad Brooklyn North. Respondent was in a car with three other members of service, one of whom was Sergeant Miguel Marte. Respondent was wearing plain clothes.

As he was walking, Mr. Moultrie was adjusting his pants. Respondent rolled down the car window and drove next to Mr. Moultrie. Mr. Moultrie moved away from Respondent and then stopped. Respondent checked Mr. Moultrie's waistband. Respondent then handcuffed Mr. Moultrie and searched the nearby ground. Mr. Moultrie's father arrived on the scene and identified his son. Mr. Moultrie was released. No weapons or other illegal items were found.

The sole charge in this case is that Respondent unlawfully searched Mr. Moultrie by removing his shoes. I find that the Department has not met its burden of proving that Respondent removed Mr. Moultrie's shoes.

In his testimony, Mr. Moultrie described how he had been walking with his phone and fixing his pants, which were falling down, when a dark car with tinted windows pulled alongside him. (Tr. 63). Since he thought he could get shot or robbed, he started to run but the police got out of the car and identified themselves. (Tr. 63-64). He testified that he stopped, put his hands up and was tackled to the ground from behind. (Tr. 64). Mr. Moultrie further testified that while he was face down in handcuffs, the officers checked his waistband, his pants, down his legs and also checked his sneakers and socks. He described the officers as "basically" sliding off his sneakers and said that the officers then "basically threw them on the floor or whatever." (Tr. 65). Mr. Moultrie also testified that the officers threw his sneakers to the side and ran over his sneakers with their car before he eventually got them back. (Tr. 69). While incorrectly naming Respondent as Officer Morales, he identified Respondent in court as the main person who searched him and who also hit him in the face with a walkie-talkie. (Tr. 65). Although he admitted that he resisted getting into the police car, the officers did put him in the car and searched the surrounding area. (Tr. 67, 70).

On cross-examination, Mr. Moultrie acknowledged that he had been arrested by the police between 10 and 15 times. (Tr. 72). He stated that he didn't like police but only because of what happened in this particular incident. (Tr. 79). Under further cross-examination, Mr. Moultrie testified that multiple officers searched him. When asked if multiple people searched his shoes, he responded, "I can't even tell you if it was multiple people right now if they were searching my shoes because again, I don't remember that night vividly like how I would if it was happening right now." (Tr. 75-76). He acknowledged he didn't recall who searched his shoes. (Tr. 76).

The Department also presented evidence in two hearsay statements given to CCRB investigators by Mr. Moultrie's father, [REDACTED], and a woman who lives in the father's building, Person A. With specific regard to Mr. Moultrie's shoes, his father told CCRB that he saw his son with his shoes off while he was in the police car and that the sneakers were outside the car. (Dep't. Ex. 1, 26 -27). He does not ever state that he personally saw any police officer take his son's shoes off and in fact, he only arrived at the scene after Mr. Moultrie was already in the police car. (Dep't Ex. 1, 7).

Person A, in her statement, was asked by the investigator if she saw any officers take Mr. Moultrie's shoes off. She stated that she just saw him barefoot and she didn't know what happened to his shoes. (Dep't. Ex. 2, 14).

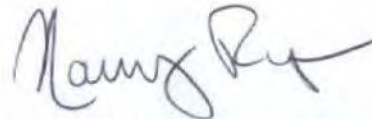
Respondent in his trial testimony gave his account of what took place that night in a very clear, thoughtful and credible way. He testified that he saw Mr. Moultrie "tugging" at an area near where he seemed to be holding something in the right side of his waistband. (Tr. 40-41). He described him as looking around in different directions. (Tr. 41). Respondent stated that he then drove next to Mr. Moultrie, and showed him his shield with the intent of asking him a question. (Tr. 42). Mr. Moultrie immediately began to run away, so Respondent got out of the car and gave chase. He saw Mr. Moultrie make a throwing motion with one hand. Respondent testified he did not see any particular object actually leave Mr. Moultrie's hand. (Tr. 42-43). He eventually stopped Mr. Moultrie and handcuffed him. Respondent frisked in the immediate area where he thought Mr. Moultrie had been playing with his waistband. He felt a hard object and lifted Mr. Moultrie's shirt in that area. He saw that Mr. Moultrie had a phone in a holder there. (Tr. 45-46). Respondent testified that he did not do any further search and never removed his shoes. (Tr. 46-47).

Respondent and the other officers searched the area where he thought Mr. Moultrie had thrown something. (Tr. 48). Mr. Moultrie did not have any ID on him, but Respondent released him after Mr. Moultrie's father identified him as someone who could properly be a visitor on NYCHA property. (Tr. 47-50). Respondent testified that no weapons or other contraband was discovered during the incident. (Tr. 50).

Sergeant Marte also testified as to the events of that evening. His testimony concerning the shoes was that, while he did not observe the Respondent during the entire time the search of the surrounding area was being conducted, he did not see Respondent take off Mr. Moultrie's shoes nor did he see Mr. Moultrie without shoes at any point. (Tr. 22, 30, 36).

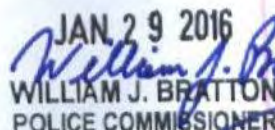
In conclusion, the Department's case with regard to the removal of Mr. Moultrie's shoes consists of Mr. Moultrie's testimony that he doesn't know who took off his shoes and the hearsay statements of two witnesses who also did not see Respondent take off Mr. Moultrie's shoes. Even if I were to credit testimony that Mr. Moultrie's shoes were off while he was in the police car, the record before me does not amount to proof by a preponderance of the evidence that Respondent removed Mr. Moultrie's shoes. I therefore find Respondent Not Guilty.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

JAN 29 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER