



OFFICE OF THE POLICE COMMISSIONER
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February 22, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Dervent Williams**
Tax Registry No. 939693
44th Precinct
Disciplinary Case No. 2018-19667

Police Officer Ahsan Zafar
Tax Registry No. 949822
Criminal Intelligence Section
Disciplinary Case No. 2018-19668

The above named members of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on October 6, 2020, and was charged with the following:

DISCIPLINARY CASE NO. 2018-19667

1. Sergeant Dervent Williams, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED] Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped an individual without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Sergeant Dervent Williams, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked an individual without sufficient legal authority.

P.G. 212-11, Page 5, Paragraph 18

INVESTIGATIVE ENCOUNTERS

DISCIPLINARY CASE NO. 2018-19668

1. Police Officer Ahsan Zafar, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED] Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped Manuel Santiago without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Police Officer Ahsan Zafar, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED] Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Manuel Santiago without sufficient legal authority.

P.G. 212-11, Page 5, Paragraph 18

INVESTIGATIVE ENCOUNTERS

In a Memorandum dated October 30, 2020, Assistant Deputy Commissioner Jeff S. Adler found Sergeant Derwent Williams and Police Officer Ahsan Zafar Guilty of all specifications in Disciplinary Case Nos. 2018-19667 and 2018-19668, respectively. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Specifically, the penalty for both Respondents in this case does not adequately address the committed misconduct. Sergeant Williams and Police Officer Zafar each stopped *and* frisked an individual without sufficient legal justification. Progressive discipline demands that such collective misconduct be addressed by imposition of additional penalty days above what was proposed by Assistant Deputy Commissioner Jeff S. Adler.

Additionally, the penalty imposed on Sergeant Williams must reflect his status as a supervisor—a Sergeant with nearly ten (10) years experience in rank—and must thus be heavier than the penalty imposed on Police Officer Zafar.

Therefore, with consideration of the totality of circumstances, and in light of each member's status and record with the Department, I deem that an overall higher penalty is warranted in this case. As a result, Sergeant Williams will forfeit eight (8) vacation days and Police Officer Zafar will forfeit six (6) vacation days, as a disciplinary penalty.


Dermot F. Shea
Police Commissioner



POLICE DEPARTMENT

October 30, 2020

-----X
In the Matter of the Charges and Specifications :

- against - :

Sergeant Dervent Williams :
Tax Registry No. 939693 :
44 Precinct :

Case No.
2018-19667

Police Officer Ahsan Zafar :
Tax Registry No. 949822 :
Criminal Intelligence Section :

Case No.
2018-19668

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Di'Indra Forgenie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent Williams:

Matthew Schieffer, Esq.
The Quinn Law Firm
399 Knollwood Road, Suite 220
White Plains, NY 10603

For Respondent Zafar:

Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-19667

1. Sergeant Derwent Williams, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED], Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped an individual without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Sergeant Derwent Williams, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED], Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked an individual without sufficient legal authority.

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INVESTIGATIVE ENCOUNTERS

Disciplinary Case No. 2018-19668

1. Police Officer Ahsan Zafar, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED], Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped Manuel Santiago without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Police Officer Ahsan Zafar, on or about February 23, 2018, at approximately 1427 hours, while assigned to 041 PCT and on duty, in the vicinity of [REDACTED], Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked Manuel Santiago without sufficient legal authority.

P.G. 212-11, Page 5, Paragraph 18

INVESTIGATIVE ENCOUNTERS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 6, 2020.

Respondents, through their respective counsel, both entered pleas of Not Guilty to the subject charges. The CCRB called Manuel Santiago as a witness, and introduced a video recording that captured the incident. Each Respondent testified on his own behalf. A stenographic transcript of

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the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Respondent Williams:

Specification 1 (stop): Guilty

Specification 2 (frisk): Guilty

Respondent Zafar:

Specification 1 (stop): Guilty

Specification 2 (frisk): Guilty

Recommended penalty: Three (3) vacation days for each Respondent.

ANALYSIS

As he was waiting outside his apartment building for a college textbook to be delivered by the postal service on the afternoon of February 23, 2018, 24-year old Manuel Santiago was approached by an individual known only as "Crazy Legs." Santiago occasionally saw Crazy Legs around the neighborhood, but they never really spoke. Crazy Legs asked Santiago if he had an extra belt, and demonstrated that his beltless pants were loose by grabbing his waistband. Santiago answered that he only had the belt he was wearing, and pulled on his belt to show Crazy Legs.

Meanwhile, Respondents, who were in plainclothes and observing this interaction from an unmarked vehicle two or three car lengths away, believed they were witnessing a drug transaction. Within seconds, they exited their vehicle and approached the two individuals on foot. It is undisputed that Respondent Zafar stopped and frisked Santiago, while Respondent

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Williams stopped and frisked Crazy Legs. At issue is whether there was reasonable suspicion to justify such actions.

Santiago testified that he was standing outside for about 12-15 minutes when he was approached by Crazy Legs, who asked if Santiago had a belt. Crazy Legs, who had a limp and walked with a cane, said he felt embarrassed, and showed Santiago that he did not have a belt to hold up his pants. Santiago apologized that he did not have a spare one, and pulled on his belt with his hands to show that he had only the one belt. According to Santiago, they were standing right next to each other, but there was no touching between them. Santiago then placed his hands back inside his jacket pockets. (Tr. 27-31, 64-67)

At this point, Respondents approached. Respondent Zafar said good afternoon to Santiago, and asked him to take his hands out of his pockets, which Santiago did. Santiago testified that he saw a badge around Respondent Zafar's neck and realized he was a police officer. The officer grabbed Santiago's left arm and began patting him down, as he questioned Santiago about why he had reached for his belt area; Santiago explained how he was just responding to Crazy Legs, who had asked for an extra belt. Respondent Zafar asked Santiago if he had anything on him, and Santiago answered that he was just waiting for the mail person, and the only items in his possession were his phone, identification, and keys. Santiago described how Respondent Zafar patted down his upper body, rib area, lower body, and also grabbed and pulled his groin area, which made Santiago feel "nervous" and "embarrassed." Respondent Zafar did not, however, reach inside any of Santiago's pockets. (Tr. 32-36, 39-41, 67-69)

During the encounter, Santiago's attention was on Respondent Zafar, so he did not see what was transpiring between Respondent Williams and Crazy Legs. Santiago did hear Crazy Legs explaining to the sergeant that he had asked Santiago for a belt. Santiago testified that his

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mother yelled down at the police officers from her apartment window, telling them that they had the wrong person and were mistaken. Respondent Zafar explained to Santiago that they thought there was a drug deal going on; he checked Santiago's identification, tapped Santiago on his arm, told him "fair enough," and walked away. (Tr. 43-48, 68-70)

The CCRB offered into evidence two photographs depicting the location of the incident (CCRB EX. 2A and 2B), as well as an email confirmation from eBay showing that the textbook that Santiago was waiting for at the time of the incident was in fact delivered that day (CCRB Ex. 3). Additionally, video footage of the encounter, taken from the building's surveillance camera, was admitted as CCRB Ex. 1. That footage, which runs for 02:17, shows the initial interaction between Santiago and Crazy Legs, as well as the arrival of Respondents and the subsequent stop and frisk of each of the two individuals.

Respondent Zafar testified that he has extensive training and experience in handling various narcotics scenarios, including his time with the SNEU team, and has been involved in more than one thousand narcotics arrests. He had previously responded to the vicinity of this incident numerous times for shootings, robberies, and assaults, and there was community concern regarding drug activity on that block. From his vehicle, he observed Santiago and Crazy Legs in conversation. Crazy Legs tugged at his waistband, and Santiago reached inside his waist area. Respondent Zafar acknowledged that he did not see any object pass between them, did not see them touch hands, and did not even see anything in their hands. No drugs or money were observed. Nevertheless, based on his training and experience, and the location of the incident, Respondent Zafar "truly believed" he was witnessing a drug transaction. (Tr. 85-86, 89-93, 101-02, 115, 118-23, 126-28)

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After making these observations, Respondent Zafar approached and asked Santiago to remove his hands from his pockets, which he did. The officer asked Santiago if he had anything on him. Santiago answered no, but Respondent Zafar proceeded to frisk Santiago, patting his waist and groin areas looking for weapons since “drug dealers are known to carry firearms.” Respondent Zafar admitted that he had not seen any weapons, nor had he observed the outline of a hard object or a bulge on either person. No drugs or weapons were found during the frisks. Respondent Zafar informed Santiago that he believed there had just been a drug transaction, but Santiago explained that he merely was showing Crazy Legs that he only had one belt. Even though it was “odd” that Crazy Legs would ask Santiago for a belt, Respondent Zafar determined that Santiago was truthful and credible. He patted Santiago on the back in order to express that he was sorry, and left the location. (Tr. 94-100, 121-22)

Respondent Williams testified that he, too, has received extensive narcotics training, and has been involved in hundreds of narcotics arrests. He noted that there have been multiple shootings in the vicinity of where this incident occurred, as well as gang activity and narcotics transactions; indeed, Respondent Williams, himself, had exchanged gunfire with a suspect on the same block in 2012. (Tr. 137-40)

Respondent Williams acknowledged that when he was interviewed by the CCRB on May 18, 2018, he did not recall any details of this encounter. He testified that [REDACTED] [REDACTED] at the time, which was a distraction for him. After the CCRB interview, he spoke with Respondent Zafar, who mentioned some details such as the unusual belt request, which enabled Respondent Williams to recall some of what transpired. (Tr. 149-52, 155-57)

According to Respondent Williams, he observed Santiago and Crazy Legs standing very close to each other having a brief conversation, and Crazy Legs motioned to his waistband. The

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sergeant believed that “it was possibly a hand-to-hand drug transaction.” Respondent Williams approached Crazy Legs and placed his hand on the suspect’s back in order to make Crazy Legs aware of his presence. Respondent Williams frisked Crazy Legs’ waist for a firearm, as well as his lower body in case the gun fell. He also asked Crazy Legs about whether he had been involved in a hand-to-hand drug transaction, but Crazy Legs explained that he was just asking Santiago for a belt. (Tr. 142-46)

All three witnesses who testified came across as credible: Santiago was respectful and precise in describing his interaction with the police officers, and both Respondents came across as professional and genuine in their accounts as well. Both sides were essentially in agreement on the details of what transpired: based on the observations they made from their vehicle, Respondents approached Santiago and Crazy Legs and stopped the two individuals. Respondent Zafar frisked Santiago, while Respondent Williams frisked Crazy Legs. The video footage in evidence, which is just over two minutes in length, begins with the initial interaction between Santiago and Crazy Legs; although they both gesture toward their waist areas, nothing passes between them, and there is no reasonable indication that a drug transaction is taking place. With that in mind, we turn to the charges against each Respondent.

Each Respondent is charged with conducting a stop and frisk without sufficient legal authority. Section 212-11 (16) of the Patrol Guide states that an MOS may stop and detain an individual “upon reasonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor.” Paragraph 18 of the same section states that an MOS may frisk an individual for a deadly weapon when the police officer “develops a reasonable suspicion that a person is armed and dangerous.”

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Specification 1 charges each Respondent with conducting a wrongful stop. Resolution of the issue of whether Respondents possessed reasonable suspicion for the stop requires evaluation of the totality of the circumstances. On the one hand, Respondents had extensive training in identifying narcotics transactions, were aware of numerous drug transactions and violent crimes on that very block, and observed both of the individuals reaching to their waist areas. However, Respondents did not observe money or drugs pass between the two individuals. Indeed, neither individual was seen holding money, drugs, or any object in his hand. There was no touching of hands between Santiago and Crazy Legs. Taken as a whole, I find that Respondents lacked reasonable suspicion to believe that the two individuals had committed, were committing, or were about to commit a drug transaction, and I find each Respondent guilty of Specification 1.

Specification 2 charges each Respondent with conducting a wrongful frisk. Again, the credible evidence did not establish that Respondents possessed reasonable suspicion that Santiago or Crazy Legs were armed and dangerous. Respondent Zafar noted that “drug dealers are known to carry weapons,” but that did not justify the frisks under the totality of circumstances presented here. Respondents did not observe any weapons in the possession of either individual, nor did they see any bulges or outlines that would lead them to reasonably suspect there was a weapon. As discussed above, from the conduct of the individuals prior to the frisk, there was no reasonable suspicion that either individual had committed a violent crime. Neither suspect made any statement suggesting that he was armed with a weapon. There had been no call or witness reporting that either suspect possessed a weapon. As such, the frisks of the two individuals were conducted without reasonable suspicion, and I find each Respondent guilty of Specification 2.

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PENALTIES

In order to determine appropriate penalties for Respondents, their service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Williams was appointed to the Department on July 11, 2005, and Respondent Zafar on July 6, 2010. Information from their personnel records that was considered in making these penalty recommendations are contained in attached confidential memoranda.

Each Respondent has been found guilty of conducting a stop and frisk without sufficient legal authority. The CCRB recommends that Respondent Zafar, whose frisk of Santiago included a pat down of his groin area, forfeit seven (7) vacation days, while Respondent Williams, a sergeant with a greater level of responsibility, should forfeit eight (8) vacation days. This Court agrees that those are aggravating factors. However, as discussed below, there also are mitigating factors present here, including the Respondents' strong histories with the Department, and so the recommendations of the CCRB are excessive.

In *Disciplinary Case No. 2019-20266* (Aug. 4, 2020), an 18-year sergeant with no disciplinary record negotiated with the CCRB a penalty of five (5) vacation days for a wrongful stop and frisk. The CCRB also cited *Disciplinary Case No. 2018-19331* (Apr. 15, 2020), where the respondent, a 10-year sergeant at the time of the incident, forfeited ten (10) vacation days for a wrongful stop and frisk. However, as this Court noted in that decision, the higher penalty was due to Respondent's disciplinary history: he previously had forfeited 45 days and been placed on dismissal probation in connection with three separate cases.

Here, in contrast, neither Respondent has a disciplinary record. Indeed, Respondent Williams has been awarded 31 medals for Excellent Police Duty and 16 medals for Meritorious Police Duty in his 15 years with the Department, while Respondent Zafar has been recognized

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with 35 medals for Excellent Police Duty and 21 medals for Meritorious Police Duty in his 10 years with the Department. Both Respondents have received consistently high performance evaluations.

Moreover, this Court finds that the misconduct in this case was due to Respondents' misunderstanding of the applicable legal principles associated with a stop and frisk, rather than an intentional disregard of the rights of the two individuals in this encounter. Both Respondents came across as conscientious in the performance of their duties. The police action taken here was born out of a genuine desire to improve the living conditions in a high-crime area where much community concern had been expressed. As seen on the video, the entire encounter lasted about one minute

Nevertheless, members of service are responsible for knowing and applying the correct legal standards during citizen encounters, and there must be some accountability for Respondents' misconduct in this case. Taking into account the totality of the facts and circumstances in this matter, I recommend that each Respondent forfeit three (3) vacation days.

Respectfully submitted,

For Capt. Osama Abdelhadi

Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER AHSAN ZAFAR
TAX REGISTRY NO. 949822
DISCIPLINARY CASE NO. 2018-19668

Respondent was appointed to the Department on July 6, 2010. On his last three annual performance evaluations, he received a 5.0 overall rating of “Extremely Competent” for 2019, and twice received 4.5 ratings of “Extremely Competent/Highly Competent” for 2016 and 2017. He has been awarded 35 medals for Excellent Police Duty and 21 medals for Meritorious Police Duty.

[REDACTED]

Respondent has no disciplinary record. In connection with the instant matter, he was placed on Level 1 Force Monitoring on February 28, 2019; monitoring remains ongoing.

For your consideration.

For *Capt. Ahsan Ahsan*
Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT DERVENT WILLIAMS
TAX REGISTRY NO. 939693
DISCIPLINARY CASE NO. 2018-19667

Respondent was appointed to the Department on July 11, 2005. On his last three annual performance evaluations, he received 5.0 overall ratings of “Extremely Competent” for 2017, 2018 and 2019. He has been awarded 31 medals for Excellent Police Duty and 16 medals for Meritorious Police Duty.

[REDACTED]

Respondent has no disciplinary record.

For your consideration.

For Capt. Duane Abdelhadi

Jeff S. Adler
Assistant Deputy Commissioner Trials