



POLICE DEPARTMENT

September 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Robert Bracero
Tax Registry No. 924973
19 Precinct
Disciplinary Case No. 2013-9570

Detective Joseph Weldon
Tax Registry No. 942693
Gang Squad Queens
Disciplinary Case No. 2013-9571

The above-named members of the Department appeared before me on August 20, 2014, charged with discourtesy after allegedly failing to state their names when asked during a vehicle stop. Respondent Weldon is also charged with conducting a frisk without sufficient legal authority. (Charges and Specifications are attached) The Civilian Complaint Review Board (CCRB) was represented by Vivian Ceden, Esq. Respondents Bracero and Weldon were represented by James Moschella, Esq., Karasyk & Moschella. The CCRB did not call any witnesses; instead, it introduced into evidence the recorded interviews of Person A and his wife, Person B. Respondents testified on their own behalf. A stenographic transcript of the trial record is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses and hearsay declarations, this tribunal finds that there was insufficient evidence to support a finding that Respondents failed to courteously and clearly state their names when requested to do so. Accordingly, Respondents are found not guilty of the charges set forth in Disciplinary Case No. 2013-9570 and Disciplinary Case No. 2013-9571, Specification No. 1. The preponderance of the credible evidence established that Respondent Weldon conducted a frisk during a

vehicle stop without sufficient legal authority. Accordingly, Respondent Weldon is found guilty of the misconduct set forth in Disciplinary Case No. 2013-9571, Specification No. 2.

FINDINGS AND ANALYSIS

The following facts are undisputed. On December 30, 2011, Respondents were assigned to the Street Narcotics Enforcement Unit (SNEU) at the 113 Precinct and were travelling in an unmarked car near Sutphin Boulevard and Foch Boulevard in Queens County. (Tr. 26-27, 44, 107, 109-110) Respondents stopped Mr. Person A at approximately 7:45 a.m. as he drove his vehicle in the vicinity of Foch Boulevard and Long Street. (CCRB Exhibits 6, 6B p. 2-3; Tr. 29, 32, 45, 47) Person A was driving his wife to the hospital for dialysis, accompanied by his two adult sons, [REDACTED] (CCRB Exhibits 6, 6B p. 10-11; 6c p. 3-4)

As Respondent Weldon approached the driver's side of the vehicle, Person A opened the car door because his window was not functioning and he could not roll it down. (CCRB Exhibits 6, 6B p. 5, 11-12; Tr. 31) Respondent Weldon asked Person A to produce his license, step out of the car and walk to the rear of the vehicle. (CCRB Exhibits 6, 6B p. 6, 11-12; 6C 4; Tr. 33, 35, 55) Person A complied. (CCRB Exhibits 6, 6B p. 6; Tr. 32, 56) Person A had a PBA card which was visible to Respondent Weldon and was also produced at the scene. (CCRB Exhibits 6, 6B p. 6-7) During this interaction, Respondent Weldon informed Person A that he had been stopped for driving 70 mph on a city street. Person A denied speeding, questioned the legitimacy of the stop and countered that he could not have been driving faster than 20 mph. Respondent Weldon explained that he had to drive his unmarked police car at 70 mph just to catch up to Person A. (CCRB Exhibits 6, 6B p. 5-7, 6C 4; Tr. 29) Respondent Bracero also exited the unmarked police car and approached Person A's vehicle. Respondent Bracero stated that he recognized Person A. (CCRB Exhibits 6, 6C p. 5; Tr. 114-115) Officer Phillips also exited Respondents' vehicle. (Tr. 30; CCRB Exhibit 7) A second unmarked police car responded to the scene. (CCRB Exhibits 6, 6B p. 10)

Respondents did not issue Person A a summons. (CCRB Exhibits 6, 6B p. 8; Tr. 39) Respondent Weldon's memo book entry for this stop states, "searched deft for

safety reason / took out of car.” (CCRB Exhibit 7; Tr. 77) Although the accounts presented by each party differ significantly with respect to what else was said during this vehicle stop, by all accounts it was an acrimonious encounter. (CCRB Exhibit 6; Tr. 111-112, 116) After Respondents left the scene, Person A drove directly to the 113 Precinct to voice his concerns about the legitimacy of the vehicle stop. He was referred to the CCRB and called to file a complaint that same day. (CCRB Exhibit 6) CCRB records indicate that Person A had filed a number of CCRB complaints prior to this stop. (Resp. Exhibits A, B) The legality of the vehicular stop is not at issue in this matter.

Discourtesy Charge

In dispute is whether Respondents Weldon and Bracero refused to provide Person A their names during the vehicle stop. Patrol Guide 203-09, Page 1, Paragraph 1 – Public Contact General, requires that police officers:

Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so. Allow the person ample time to note this information.

During his December 30, 2011, phone call to CCRB, Person A told the interviewer that the officers were not wearing badges. When he asked an officer to state his name, Person A first told the interviewer that the response was “Springer.” Person A contends that when he asked another officer his name, that officer responded that his name was also “Springer.” Person A commented that it was “mighty weird” that they were both named “Springer.” One officer retorted, “we [are] all brothers.” (CCRB Exhibits 6, 6B p. 9-10) Toward the end of the December 30, 2011, phone interview, Person A gave a different name and said, “Officer Spring and there’s a badge number 3100.” (CCRB Exhibits 6, 6B p. 26) During her January 17, 2012 interview, Person B reported that she did not get the officers’ names or badge numbers but that two officers gave her husband the same name and said they were “brothers.” (CCRB Exhibits 6, 6A p. 15-16)

Respondent Weldon testified at the hearing that Person A and his family were “loud” and “combative” as they contested the stop and repeatedly asked for their names.

Respondent Weldon explained that he gave his name and shield “two or three times” and added, “I don’t believe he had a pen. I told him there are only so many times I can give you my name and shield. I can’t sit out here all day.” (Tr. p. 40-41) Respondent Bracero agreed that Person A was “combative” and “agitated.” Respondent Bracero knew Person A from his work as a sergeant at the 113 Precinct and testified that Person A had been similarly “combative” during those encounters. Respondent Bracero attested that on the day at issue, he provided Person A his name and badge number upon request. (Tr. 114-15, 118, 129)

CCRB sought to prove its case on the basis of Person A and B’s hearsay statements and the uncontested fact that there is an NYPD publication named *Spring 3100*. Although hearsay is admissible in an administrative tribunal, it must be sufficiently probative and reliable to be accorded probative weight. *Ayala v. Ward*, 170 A.D.2d 235, 565 N.Y.S.2d 114 (1st Dep’t 1991), *lv. to app. den.*, 78 N.Y.2d 851, 573 N.Y.S.2d 69 (1991). Where, as here, the hearsay evidence is controverted, a fact finder must very carefully scrutinize the nature and reliability of the out of court statement. *In re Matter of 125 Bar Corp. v. State Liquor Authority of the State of NY*, 24 N.Y.2d 174 (1969).

Several factors weigh against the reliability of the hearsay statements entered into evidence. Although Person A was unequivocal in his statement to the CCRB that police officers on the scene did not provide their real names, his account of what actually occurred was imprecise.

First, his statement did not clearly identify Respondents as the police officers who allegedly gave him a false name. There is no dispute that Respondents stopped Person A’s vehicle that day, however, three officers, not two, exited Respondents’ car during the stop (Tr. 30), and a second car responded. In his first CCRB statement Person A described the scene as follows:

I asked him ... his name and he told me his name was Springer, then by that time some more officers came and...jump[ed] on the bandwagon, so I asked him what his name, he said his name also was Springer. (CCRB Exhibits 6, 6B p. 9-10)

This is exactly the type of case where the test of cross-examination is necessary to assess details, motives and ultimately, the reliability of a complaining witness account.

Respondents had a third officer with them when they first pulled Person A over and all three exited the car. While Person A told CCRB that two officers gave him the same name, it is unclear from the hearsay statement which of the three officers said what during this alleged exchange. (CCRB Exhibits 6, 6B p. 9-10, 19-20, 26) Person A had a hard time providing a physical description of the officers and added to the confusion by stating that other officers, possibly from the second car, “jump[ed] on the bandwagon.” Even if Person A’s allegation was deemed to be true, the hearsay declaration presented to this tribunal is insufficient to connect Respondents to those statements.

Second, Person A’s statement to the CCRB was also inconsistent with respect to the information the officers allegedly provided. At first, Person A states that the name he was given was Springer. During the end of the interview he leaves to retrieve a paper with the license plate numbers of the two police vehicles involved in the incident. On the recording it is clear that when he returns, an unidentified voice dictates the license plate numbers to him. After Person A provides those numbers to the interviewer, an unidentified voice addresses Person A again after which he immediately tells the CCRB interviewer, “Officer Spring and there’s a badge number 3100.” (CCRB Exhibits 6, 6B p. 26) We do not know whether this new information was based on Person A’s own recollection or whether an unknown third person gave him that information to relay to CCRB. What we do know from CCRB recordings is that Person A never repeats the 3100 number, has difficulty recalling whether a badge number was obtained, affirmatively states that he was not given a badge number and then vacillates on the name allegedly provided during the stop. For example, at his second CCRB interview, Person A could not recall the name and then had difficulty deciding between Springer and Spring. (CCRB Exhibits 6, 6C p. 5-6, 11, 20-21) He also told the CCRB that the officers did not give him a badge number, then provides the purported badge number 3100 and speculates that his wife or son must have obtained a badge number. (CCRB Exhibit 6, 6C p. 11, 22) During her CCRB interview, however, Person B did not corroborate this and instead stated that while she wrote down the license plate numbers she did not get badge numbers because the officers did not provide them and no badges were shown. (CCRB Exhibits 6, 6A. p. 4, 10-11, 17)

In conclusion, although this tribunal has some concern about Respondent Weldon's testimony that he provided his name but could not "sit" at the scene "all day," the preponderance of the credible evidence does not support a finding that, even if true, Respondents were the officers who engaged in this alleged exchange. Without being able to observe the complainants' demeanor at trial, and without the benefit of clarifying the details of their accounts and possible motives for filing a report, this tribunal cannot find that the hearsay evidence presented was sufficient to sustain the discourtesy charge against Respondents. The hearsay provided was also insufficient to establish an inference that the existence of an NYPD publication entitled *Spring 3100*, and its use as an inside joke at the complainants' expense, corroborated the claim that Respondents provided the false name "Spring" and the false badge number "3100."

Unauthorized Frisk Charge

Also in dispute is whether Respondent Weldon frisked Person A without sufficient legal authority during the vehicle stop. Patrol Guide 212-11, Page 1, Paragraph 2 Stop & Frisk, authorizes police officers to: "Frisk, if you reasonably suspect you or others are in danger of physical injury." CCRB relied on Person A's recorded interviews, and Respondent Weldon's memo book entry (CCRB Exhibit 7), to prove that Respondent Weldon failed to follow this section of the Patrol Guide. Respondent Weldon testified on his own behalf. After assessing the record as a whole, I find that the preponderance of the credible evidence established that Respondent Weldon conducted an unauthorized frisk as charged in Disciplinary Case No. 2013-9571, Specification No. 2.

During his December 30, 2011, CCRB phone call, Person A told the interviewer that Respondent Weldon frisked him when he stepped out of the car and walked to the rear of the vehicle. (CCRB Exhibits 6, 6B p. 12) Specifically, Person A reported the following:

| | |
|-----------|---|
| CCRB: | So, you mentioned that an officer was frisking you. Can you describe exactly what he did with his hand? |
| Person A: | No, only that it's like, like patted me down, that's all he did. |
| CCRB: | What parts of your body did he touch? |
| Person A: | The sides where my pocket is. He told me you ain't got anything that you know you ain't supposed to have. |

(CCRB Exhibits 6, 6B p. 12)

During his second CCRB interview on January 17, 2012, Person A responded to the question, "...at any point were you patted down or searched on your body?" as follows: "Well, they didn't do a whole lot of that. He did like the pocket, but he didn't really do all of that." When asked again, he agreed that respondent did "feel" the pockets of his pants where he kept keys and loose change. (CCRB Exhibits 6, 6C p. 18-20) Person B did not see a pat down but her husband was not always in her line of vision (CCRB Exhibits 6, 6A p.18)

Respondent Weldon described Person A's demeanor during the stop as "very angry" and explained that:

I didn't know what type of individual I was really dealing with. I wasn't really able to have a normal conversation with him because the door was open. I couldn't anticipate what was going to happen after I asked him to exit the vehicle. (Tr. 34-36, 37-38)

Despite this description of Person A, Respondent Weldon clarified that he did not believe Person A was armed and that "nothing about [his] physical appearance" made him fear for his safety. (Tr. 36-37, 61-64; CCRB Exhibit 7) Respondent Weldon noticed a "bulge" in Person A's pocket, but testified that this observation "did not cause him to frisk" Person A because he knew it was only pocket change. (Tr. 95-96)

Respondent Weldon testified that his primary safety concern was that they were standing in the street near vehicular traffic as they spoke by an open car door. He acknowledged having limited physical contact with Person A for the sole purpose of "guiding" him out of traffic. Specifically, as Person A faced the vehicle, Respondent placed one hand on his shoulder and one hand on his leg as they walked to the rear of the car. (Tr. 34-37, 66) Although Respondent Weldon admitted to writing in his memo book, "searched deft for safety reason," he denied frisking or searching Person A.

This is a close case. As noted above, where hearsay evidence is relied upon to meet the complainant's burden of proof, this tribunal must carefully assess its reliability and probative worth. *See People ex. rel. Vega v. Smith*, 66 N.Y.2d 130, 495 N.Y.S.2d 332 (1985); *300 Gramatan Avenue Associates v. State Division of Human Rights*, 45 N.Y.2d 176, 179-80, 408 N.Y.S.2d 54, 56 (1978). The courts have held, however, that

corroborating evidence may bolster the reliability of an out of court statement that supports a determination. *Police Dep't v. Ayala*, OATH Index No. 401/88 (Aug. 11, 1989), *aff'd sub nom. Ayala v. Ward*, 170 A.D.2d 235, 565 N.Y.S.2d 114 (1st Dep't 1991), *lv. to app. en.*, 78 N.Y.2d 851, 573 N.Y.S.2d 69 (1991). Here, the truthfulness of Person A's hearsay declaration and the reliability of his account concerning the frisk were corroborated and supported by several factors.

First, although Person A's version of events was presented through hearsay evidence, his description of the frisk was straightforward, unvarnished and without signs of embellishment. In fact, Person A minimized the intrusiveness of the frisk during his two conversations with the CCRB. For example, he used phrases such as "they didn't do a whole lot of that" and "that's all" when recounting that the frisk was limited to his pockets. This frank and upfront statement was particularly convincing given Person A's prior history of filing multiple CCRB complaints.

Second, Respondent Weldon's own memo book entry, "searched deft for safety reason," supports the hearsay declaration that an unauthorized frisk was conducted. I make this finding because in contrast to Person A's very direct account of the frisk, I found Respondent Weldon's testimony to be contrived and less than forthcoming. Significantly, I did not believe Respondent Weldon's questionable explanation that his memo book entry, "searched deft for safety reason" was only meant to describe or explain the subsequent memo book notation; to wit, that he took Person A "out of [the] car." I credit Respondent Weldon's statement that prior to receiving more extensive training in 2012 or 2013, many police officers used the words "frisk" and "search" imprecisely. (Tr. 91-93) I do not, however, believe that this explains his alleged use of the word "search" to describe asking Person A to exit his vehicle during a stop. In fact, upon examination of the memo book, the latter phrase is written as a distinct entry separated from the term "search" by a slash. Given the totality of the evidence, it is much more likely that Respondent Weldon confused the term "search" for "frisk," thereby validating the claim made here that an unauthorized frisk was conducted.

Respondent Weldon's credibility on this point was further impacted by his CCRB interview. At the hearing, CCRB presented the section of Respondent Weldon's interview where he was asked to read his memo book notation for the interviewer.

Respondent Weldon read the memo book entry but instead of reading the phrase “searched deft for safety reason,” he substituted that line for, “Seat belt for the defendant didn’t work either.” (Tr. 85-90) Although he explains at the CCRB interview that, “I’m trying to read the the thing didn’t copy right,” I found Respondent Weldon’s explanation that he could not read that specific line on a copy of his memo book to stretch credulity.

Accordingly, I find that the record established that Respondent Weldon engaged in the misconduct set forth in Disciplinary Case No. 2013-9571, Specification No. 2.

PENALTY

To determine an appropriate penalty, Respondent Weldon’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Weldon was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB recommended a penalty of eight vacation days for the misconduct alleged in two separate specifications. Respondent Weldon, however, was found guilty of only one specification -- wrongfully frisking an individual during a vehicular stop. Accordingly, a lesser penalty is warranted.

Although Respondent Weldon’s unauthorized frisk was brief and limited to patting down the outside area of a civilian’s pants pockets, at the time of the incident he had been a member of the service for over five years and was working plainclothes with the Street Narcotics Enforcement Unit. Therefore, he was an experienced officer with specialized training who should have known the correct standard for an authorized frisk. It is important to note that although Respondent has not been the subject of prior formal discipline, in 2012 he was placed on Level I Force Monitoring for receiving three civilian complaints in one year.

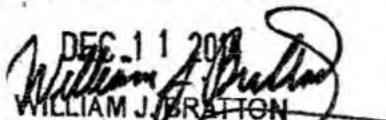
Based on the factors above, and the observation of this tribunal that Respondent Weldon's testimony was less than forthcoming, I recommend the forfeiture of four vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

DEC 11 2018

WILLIAM J. BRATTON
POLICE COMMISSIONER

CHARGES AND SPECIFICATIONS:

Disciplinary Case No. 2013-9570

1. Said Sergeant Robert Bracero, on or about December 30, 2011, at approximately 7:30 hours, while assigned to the 113th Precinct and on duty, in the vicinity of Foch Boulevard and Long Street, in Queens County, was discourteous in that he failed to courteously and clearly state his name when requested to do so by Person A.

PG 203-09, Page 1, Paragraph 1 – PUBLIC CONTACT – GENERAL

Disciplinary Case No. 2013-9571

1. Said Police Officer Joseph Weldon, on or about December 30, 2011, at approximately 7:30 hours, while assigned to the 113th Precinct and on duty, in the vicinity of Foch Boulevard and Long Street, in Queens County, was discourteous in that he failed to courteously and clearly state his name when requested to do so by Person A.

PG 203-09, Page 1, Paragraph 1 – PUBLIC CONTACT – GENERAL

2. Said Police Officer Joseph Weldon, on or about December 30, 2011, at approximately 7:30 hours, while assigned to the 113th Precinct and on duty, in the vicinity of Foch Boulevard and Long Street, in Queens County, abused his authority as a member of the New York City Police Department, in that he frisked Person A without sufficient legal authority.

PG 212-11, Page 1, Paragraph 2 – STOP & FRISK

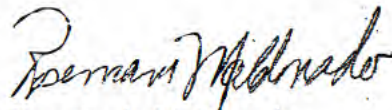
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JOSEPH WELDON
TAX REGISTRY NO. 942693
DISCIPLINARY CASE NO. 2013-9571

Respondent received overall evaluation ratings of 4.5 from May 16, 2013 to May 15, 2014, 4.0 in an 8-month evaluation from May 19, 2012 to January 18, 2013, and 4.5 in a 15-month evaluation from May 19, 2012 to August 19, 2013. He has received 10 Excellent Police Duty Medals and 3 Meritorious Police Duty Medals.

[REDACTED]
[REDACTED] June 19, 2012, he was placed on Level I Force Monitoring for receiving three civilian complaints in one year. He has no prior formal disciplinary record.

For your consideration.


Rosemarie Maldonado
Deputy Commissioner Trials