



POLICE DEPARTMENT

June 11, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Starlette Chisem
Tax Registry No. 940000
Warrant Section
Disciplinary Case No. 2013-10809

The above-named member of the Department appeared before me on April 1, 2015, charged with the following:

1. Said Police Officer Starlette Chisem, on or about July 17, 2012, at approximately 1640 hours, while assigned to the 90th Precinct and on duty, in the vicinity of Marcy Avenue and South Second Street, Kings County, abused her authority as a member of the New York City Police Department in that she frisked Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel, Esq. Respondent was represented by John Tynan, Esq. Respondent through her counsel, entered a plea of Not Guilty to the subject charge. The CCRB relied upon the hearsay statement of Person A. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found guilty of the charge.

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FINDINGS AND ANALYSIS

Respondent is charged with abusing her authority as a member of the New York City Police Department by conducting a frisk without sufficient legal authority. After reviewing the record in its totality I find that Respondent engaged in the charged misconduct.

CCRB relied primarily on hearsay to prove its case. It is well established that hearsay is admissible in administrative proceedings and, if sufficiently relevant and probative, may constitute substantial evidence. *Matter of Gray v. Adduci*, 73 N.Y.2d 741 (1988) The hearsay evidence admitted at this hearing consists of the transcript and recording of Person A's August 29, 2012, CCRB interview. Upon review of both the recording and transcript, however, I found that much of the account contained therein referred to matters outside the scope of the charges. Accordingly, I make the following findings of fact based primarily on Respondent's testimony.

On July 17, 2012, Person A had an internship at Beau Couture in Williamsburg, Brooklyn. At about 4:45 pm she was returning to the office after having delivered some packages to the post office. On Marcy Avenue and South Second Street she stopped by a gated alleyway between two buildings. Person A told the CCRB during her interview that there was a cat in the alley that caught her attention and she was calling out to it. (CCRB Ex. 1A pp. 3-4)

This section of Williamsburg is considered a high crime area with heavy drug activity. The buildings around the alley were registered with the Trespass Affidavit Program, also known as Clean Halls, and subject to interior vertical patrols for

trespassers. On July 17, 2012, Respondent was assigned to the Street Narcotics Enforcement Unit (SNEU) with two other members of service. The officers were in uniform but working in an unmarked vehicle. The detail was observing the area for drug sales and drug use. (Tr. 15-17)

At approximately 1640 hours, Respondent was driving in the unmarked vehicle when she observed a young woman, Person A, wearing a black hoodie and shorts standing in front of the locked gate of an alleyway. Respondent noted that the gated alleyway accessed the rear entrance of an adjacent residential building. Person A stood facing the gate with her back toward the street. To Respondent, she appeared to be manipulating the gate with an object to gain access to the rear of the building. After observing Person A for a minute from approximately 30 feet away, Respondent exited the vehicle, walked toward her and repeatedly called out, "Excuse me, ma'am." Person A continued standing with her back against the street and did not turn around. (Tr. 18-21, 50)

When Respondent was a couple of inches away, Person A turned around. According to Respondent, Person A was holding a four inch section of an umbrella stretcher -- the thin metal portion that attaches the fabric to the pole. Respondent noticed that she "fumbled a little bit" and put the stretcher in her pocket. Respondent explained that in her experience as an officer assigned to SNEU, a thin piece of metal like a stretcher can be used to push crack cocaine into a pipe. (Tr. 20, 39-40)

Respondent asked what she was doing. Person A replied that she was feeding the cats. Respondent did not see any cats and asked to see the food. Person A did not produce any food and stated that she did not have to show Respondent anything. The two

other officers stood close by "just in case." According to Respondent, Person A was "moving her hands around" but did not place her hands in her pockets after Respondent told her to refrain from doing so. Person A became emotional and yelled at Respondent and then started to cry. Respondent then frisked the outermost layer of Person A's clothing from the neck of her hoody, down to her sleeves and then to her pocket. She felt the umbrella stretcher in Person A's pocket. No weapons were retrieved. During the pat down Person A became even more upset and Respondent tried to "console" her. (Tr. 20-23, 46-50)

At issue is whether Respondent was authorized to frisk Person A. Patrol Guide Procedure 212-11 defines "frisk" as "(a) running of the hands over the clothing, feeling for a weapon." This Patrol Guide Procedure further states that "a uniformed member of the service" may lawfully "frisk" a person only "if you reasonably suspect you or others are in danger of physical injury." The Patrol Guide mirrors court decisions holding that where a police officer has reasonable suspicion that an individual who has lawfully been stopped may be dangerous a frisk can be made for weapons. *People v. Mack*, 26 N.Y.2d 311, 317(1970); Legal Bureau Bulletin, Vol. 1, No. 3 (March 31, 1971)

In this case, Respondent's own testimony established that during this encounter she did not possess sufficient information to form a reasonable belief of danger to herself or others. At trial, Respondent explained that she noticed Person A carrying a four inch segment of an umbrella stretcher in her hand and then saw her put that small piece of metal in her pocket. Respondent conducted a pat down of Person A's clothing "to make sure what was in her pocket was what I thought it was." The frisk confirmed her

initial observation that Person A had a segment of a thin metal umbrella stretcher in her pocket. (Tr. 23, 25-26, 43-44, 50)

Respondent did not frisk Person A or confiscate the stretcher when she first approached or after the frisk. Nor did she see evidence of a weapon, such as a bulge, prior to the pat down of her neck, sleeves and pocket. In fact, at trial Respondent agreed with her CCRB interview statement that prior to the frisk "I just felt comfortable enough that I didn't need to go for it because I knew what was there. But I wanted to first make sure that was all that was there." (Tr. 40-44) At trial she also acknowledged that she did not feel threatened by Person A "because she did not have accessibility to a weapon. If there was a weapon in her pockets, I didn't feel threatened because her hands were visible." (Tr. 48) In sum, Respondent testified that at the time of the frisk the circumstances did not suggest a threat to her safety.

At trial Respondent did make reference to "safety issues" due to Person A's "weird," emotional, "jittery" and disrespectful demeanor. Given the totality of circumstances in this case, however, these generalized descriptions were legally insufficient to justify a frisk. Accordingly, this tribunal finds that Respondent did not have sufficient legal authority to conduct a frisk of Rosenbaum's neck, sleeves and pocket.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on January 9, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB made a penalty recommendation of five vacation days. Recent cases involving unauthorized frisks, however, have resulted in lower penalties being imposed. See *Disciplinary Case No. 2013-9623 (2015)* (Nine-year police officer with no prior disciplinary record received a reprimand for frisking and searching complainant without the requisite legal authority); See *Disciplinary Case Nos. 2013-9653 & 2013-9654 (2015)* (Two eight-year members with no prior disciplinary record forfeit three vacation days each for stopping, frisking, and searching complainant without sufficient legal authority); *Disciplinary Case Nos. 2013-9621 & 2013-9622 (2015)* (Nine-year police officer with no prior disciplinary record forfeits two vacation days for frisking complainant's waistband without sufficient legal authority. While the stop was lawful, Respondent did not articulate any specific reason to suspect that complainant was carrying a weapon in that area); Compare, *Disciplinary Case No. 11070/13 (2015)* (Twenty-year police officer with no prior disciplinary history negotiated a penalty of five vacation days for a stop, frisk, and search of an individual without sufficient legal authority and for causing said individual to be issued a disorderly conduct summons without sufficient legal authority)

This tribunal was impressed by Respondent's candor at trial and her articulated commitment to public safety. Given that Respondent has no prior disciplinary history, and the fact that the unauthorized frisk was brief, I recommend the forfeiture of two vacation days as the appropriate penalty.

Respectfully submitted,


Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED


JUN 22 2015
WILLIAM J. BRATTON
POLICE COMMISSIONER


POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER STARLETTE CHISEM
TAX REGISTRY NO. 940000
DISCIPLINARY CASE NO. 2013-10809

On her last three performance evaluations, Respondent received an overall rating of 3.5 "Highly Competent/Competent" twice and 3.0 "Competent" once. [REDACTED]

[REDACTED]. Respondent has no prior formal disciplinary record.

For your consideration.


Rosemarie Maldonado
Deputy Commissioner Trials