



POLICE DEPARTMENT CITY OF NEW YORK

December 30, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Robert Silva
Tax Registry No. 952239
41 Precinct
Disciplinary Case No. 2014-12228

Police Officer Robert Uhl
Tax Registry No. 953507
28 Precinct
Disciplinary Case No. 2014-12229

Charges and Specifications:

Disciplinary Case No. 2014-12228

1. Said Police Officer, Robert Silva, while on duty and assigned to the Patrol Borough Bronx, on or about March 16, 2013, at approximately 2230 hours, [REDACTED] [REDACTED] did engage in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said location without sufficient legal authority. (*As amended*)
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Police Officer, Robert Silva, while on duty and assigned to the Patrol Borough Bronx, on or about March 16, 2013, at approximately 2230 hours, [REDACTED] [REDACTED], abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

Disciplinary Case No. 2014-12229

1. Said Police Officer, Robert Uhl, while on duty and assigned to the Patrol Borough Bronx, on or about March 16, 2013, at approximately 2230 hours, [REDACTED] [REDACTED] did engage in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said location without sufficient legal authority. (*As amended*)
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer, Robert Uhl, while on duty and assigned to the Patrol Borough Bronx, on or about March 16, 2013, at approximately 2230 hours, [REDACTED] [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.

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

Appearances:

For CCRB-APU: Andre D. Applewhite, Esq.

For Respondents: Craig Hayes, Esq.

Date of Hearing:

November 4, 2015.

Decision:

Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 4, 2015.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB presented the out-of-court statements of Person A and Person B as hearsay evidence at this trial. Each 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 Respondents Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is not disputed that the owner [REDACTED] had registered the building in the Department's "Clean Halls" program; that Respondents were performing a lawful vertical patrol

inside the building; and that as Respondents were walking down the staircase onto the [REDACTED] landing, Person A was standing on the landing holding a cup in his hand.

Because Person A, who presently lives in Pennsylvania, did not appear to testify at this trial, the CCRB Administrative Prosecutor offered the transcript of CCRB's interview of Person A as hearsay evidence, ostensibly as proof that Respondents had stopped Person A. However, this hearsay evidence is not probative of the charged misconduct because Person A told his CCRB interviewer that he never heard Respondents tell him to stop, or say anything else to him, and because Person A further stated that he was never stopped by Respondents.

When Person A was asked by his CCRB interviewer to "tell me what happened," he answered, in part, "As soon as I see police come down the steps, I walk in the house... as soon as they come down the steps, I just turn around. I ain't even waste no time and I walk in my apartment." (CCRBX 1 p. 3-4) When he then heard "a commotion in front of the door" he was "already in the apartment now" (CCRBX 1 p. 4) about "five to six feet" away from the door. (CCRBX 1 p. 55-56) When Person A was asked when he saw Respondents coming down the steps, "What did the officers say?" He answered, "I walked away before he got to say anything. I seen them [Respondents] and I turned around and walked. I was already in my house. If he did say anything, I wasn't paying attention. I was in my house already. I ain't give him no time. All I know I seen him come down the steps as soon as I seen him ran I turned around and walked in like." (CCRBX 1 p. 10) When Person A was asked, "So how fast do you go into your apartment?" He answered, "I was directly in front of the door. All I had to do was turn around and step in." (CCRBX 1 p. 11) Finally, when Person A was asked, "When you saw the officers coming down the steps, did you make any statement at that point...to the officers?" He answered, "All I remember is turning around and walking in the apartment." (CCRBX 1 p. 53-

54) When officers later entered the apartment, none of them spoke to him or restrained him.
(CCRBX 1 p. 57-58)

The Administrative Prosecutor also offered the transcript of CCRB's interview of Person B (CCRBX 2) as hearsay evidence at this trial. Person B, who is the tenant of apartment ■■■, told her CCRB interviewer that her friend Person A was attending a party inside her apartment and that he had stepped out into the hallway. When she saw him re-enter the apartment, two police officers were behind him "running to go in the apartment." Person B moved to the doorway and she and her sister-in-law Desiree blocked the officers as "they were pushing" to get in. They told her that they wanted to speak to the man who had just entered the apartment. Respondent Silva pushed her "arms down" and told her, "I'm gonna go in." She told him, "No, you're not." She stated that Respondent Silva was "trying to force his way in, but not really pushing me hard enough" because she kept telling him that she was pregnant. (CCRBX 2 p. 18-22)

Although Person B did not state that Person A had been stopped by Respondents or that Respondents had succeeded in their efforts to enter her apartment, I nonetheless find Respondents guilty as charged based solely on their own testimony.

Respondent Silva testified that when he saw Person A standing on the landing holding a red Solo cup in his hand, he approached Person A with the "intention...to investigate, ask him if he lived there" and "determine what could be in the cup" because he "had a suspicion it could be alcohol." Judicial decisions have recognized that a police officer has the right to approach and question a person who is found inside a common area of a "Clean Halls" building as to whether he is a resident, the guest of a resident, or has other legitimate business in the building, and to request that the person produce identification, so that the officer can ascertain whether or not the

person is a trespasser.¹ Thus, Respondents had the right to approach and address questions to Person A regarding his presence in the building.

Respondent Silva further testified that Person A “began to flee upon sight of me running down the hallway and he threw the Solo cup” onto the floor which “heightened” Respondent Silva’s “suspicion” that “it was probable it could have been alcohol.” Respondent Silva testified that because he saw Person A “throw the cup down, which is a violation committed in my presence, at that point I didn’t think he was free to leave.” Respondent Silva chased him, he told him to “stop,” and when Person A did not stop, he grabbed his right arm but Person A broke free from his grasp and ran toward the door to an apartment. Respondent Silva pursued Person A and grabbed him a second time when Person A “was in the doorway to the apartment.” Because Person A continued to move into the apartment, Respondent Silva testified that “I get dragged into the apartment at this point struggling with him.” When Person A broke free from his grasp and ran deeper into the apartment, Respondent Silva exited the apartment and stayed in the hallway just outside the door waiting for supervisors to arrive at the scene since “I didn’t want to really go into the apartment” because “I felt it was not really prudent.”

Respondent Uhl testified that he and Respondent Silva pursued Person A when he ran from them and that they tried to apprehend him because “we suspected him of having an open alcoholic container in the hallway and we also observed him litter by throwing the cup” onto the floor in the hallway. Respondent Uhl was behind Respondent Silva when he grabbed Person A. After Person A broke free from Respondent Silva’s grasp, Respondent Uhl followed Respondent Silva as he pursued Person A to the apartment door Person A was entering. Respondent Uhl testified that he physically entered the apartment by reaching in through the doorway, grabbing

¹ *People v. Medina*, 16 Misc.3d 382, 842 NYS2d 227 (Sup. Ct. Bronx Cty. 2007), footnote 4.

Person A and attempting “to pull him out of the apartment.” In order to keep the door open, Respondent Uhl stuck his “foot between the door and the door jamb.” Person A broke free from his pulling and ran further into the apartment.

Respondents asserted that their actions of grabbing Person A and crossing the threshold of the apartment doorway in an attempt to apprehend him were lawful because they reasonably suspected that there had been alcohol in the cup that they had seen Person A holding and because Person A’s action of throwing the cup to the floor constituted the offense of littering.

Although Person A admitted to his CCRB interviewer that the cup he was holding when he saw Respondents coming down the staircase contained alcohol, Respondents admitted that they did not know if there was any alcohol in the cup. Thus, even if I credited Respondents’ claim that Person A tossed the cup onto the floor,² since at the point when Respondents grabbed Person A they possessed no more than a mere suspicion that there had been alcohol in the cup that they had seen Person A holding, they had an insufficient basis to issue him a summons for possessing an open container of an alcoholic beverage. Thus, the facts presented here differ from a case where an officer was found to possess a sufficient basis to issue a summons because the officer had observed a person in a common area of a Clean Halls building clearly drinking alcohol from an open container.³

As to Respondents’ contention that Person A’s action of throwing the cup to the floor constituted the offense of littering, Respondents appear to have interpreted “Clean Halls” too literally. The “Littering Prohibited” offenses contained in the NYC Administrative Code⁴ and

² The Administrative Prosecutor asserted that this claim was a recent fabrication because Respondents did not mention this at their CCRB interviews.

³ *People v. Medina*, *Ibid.* (where the officer testified that he had observed the defendant in the lobby of a Clean Halls building drinking from an open bottle of Heineken beer and that he also saw beer bottles on the floor).

⁴ NYC Admin. Code section 16-118.

the NYC Health Code,⁵ which closely mirror each other, both state that: "No person shall litter...or throw...garbage... of any kind...in or upon any street or public place, vacant lot, air shaft, areaway, backyard, court or alley." Since Clean Halls buildings are privately owned, the hallways of such buildings are not public places and do not fall into any of the delineated outdoor areas.

Finally, although both Respondents testified that one of the reasons that they pursued Person A was because he ran away as soon as he saw them, Respondents did not possess reasonable suspicion that Person A had committed a crime and "an officer must reasonably suspect that a person has committed a felony or misdemeanor before he may lawfully pursue a person he wishes to question."⁶

In conclusion, since Respondents had an insufficient legal basis to forcibly stop Person A, they abused their authority by grabbing him and they entered apartment [REDACTED] without sufficient legal authority when they crossed the doorway threshold into the apartment as they attempted to keep him in their grasp.

PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent Silva was appointed to the Department on January 9, 2012 and Respondent Uhl was appointed on July 11, 2012. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

⁵ Title 24 NYC Health Code section 153.01.

⁶ Legal Bureau Bulletin, "Forcible Stop Pursuing a Fleeing Individual," Vol. 23, No. 4 (July 1993).

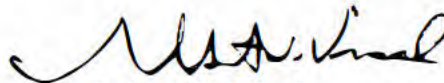
The CCRB Administrative Prosecutor recommended that each Respondent forfeit five vacation days as a penalty.

In determining a penalty recommendation, I have taken into consideration the fact that both Respondents candidly admitted that they did not know if there was any alcohol in the cup they saw Person A holding and neither Respondent claimed that he had smelled alcohol. I have also taken into consideration that Respondents exercised restraint by not pursuing Person A when he broke free from their grasp and moved from the doorway area deeper into the apartment.

Finally, I have taken into consideration that neither Respondent has previously been the subject of formal or informal discipline, and that on the date that this incident took place Respondent Silva had been performing patrol duties for only eight months and Respondent Uhl had graduated from the Police Academy only two months earlier.

Therefore, it is recommended that both Respondents receive a reprimand as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

FEB 23 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT SILVA
TAX REGISTRY NO. 952239
DISCIPLINARY CASE NO. 2014-12228

Respondent received an overall rating of 3.5 on his 2014 annual performance evaluation, and 3.5 on his 22-month probationary evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]

He has no prior formal disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT UHL
TAX REGISTRY NO. 953507
DISCIPLINARY CASE NO. 2014-12229

Respondent received an overall rating of 3.0 on his 2014 annual performance evaluation, and 3.0 on his 22-month probationary evaluation. He has no medals. [REDACTED]

He has no prior formal disciplinary record and no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials