



POLICE DEPARTMENT

July 30, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Robert Admirand
Tax Registry No. 929595
Patrol Borough Manhattan South
Disciplinary Case Nos. 85604/09 & 85651/09

The above-named member of the Department appeared before me on March 23, 2010 and April 9, 2010, charged with the following:

Disciplinary Case No. 85604/09

1. Police Officer Robert Admirand, assigned to the Patrol Borough Manhattan South, while on duty, on or about March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, in New York County, did fail to do his duty as a member of the New York City Police Department in that said Police Officer failed to ensure that a quantity of what was believed to be marijuana was safeguarded and properly vouchered.

P.G. 218-24, Page 1 PROCESSING CONTROLLED SUBSTANCE/MARIJUANA
CONTRABAND STORED AT STATIONHOUSE

2. Police Officer Robert Admirand, assigned to the Patrol Borough Manhattan South, while on duty, on or about March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, in New York County, did fail to maintain his activity log in that after an encounter with Mr. Fernando Tapia said Police Officer Admirand did not make notations about the encounter in his activity log.

P.G. 212-08, Page 1 – ACTIVITY LOGS

3. Police Officer Robert Admirand, assigned to the Patrol Borough Manhattan South, while on duty, on or about March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, in New York County, after having a street encounter with Mr. Fernando Tapia did fail to prepare a UF-250 Stop and Frisk Report.

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

COURTESY • PROFESSIONALISM • RESPECT

4. Police Officer Robert Admirand, assigned to the Patrol Borough Manhattan South, while on duty, on or about March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, in New York County, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Police Officer did abuse his authority as a member of the New York City Police Department by searching a vehicle occupied by Mr. Fernando Tapia without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

Disciplinary Case No. 85651/09

1. Police Officer Admirand, while assigned to Patrol Borough Manhattan South, while on-duty, on or about August 19, 2008, in the vicinity of 40 Rector Street, New York County, did abuse his authority as a member of the New York City Police Department in that said Police Officer failed to fully cooperate with an investigation conducted by the Civilian Complaint Review Board in that said police officer did not provide his activity log to the investigator. (*As amended*)

P.G. 211-14, Page 1, Paragraph 2 – INVESTIGATION BY CIVILIAN
COMPLAINT REVIEW BOARD

2. Police Officer Robert Admirand, while assigned to Patrol Borough Manhattan South, while on-duty, on or about March 13, 2008, in the vicinity of 41 West 25th Street, in New York County, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department in that said Police Officer did abuse his authority as a member of the New York City Police Department by wrongfully issuing a summons to Ms. Tanangachi Mfuni. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

The Department was represented by Adam Sheldon, Esq., and David Bernstein, Esq., Department Advocate's Office, and the Respondent was represented by John P. Tynan, Esq.

The Respondent, through his counsel, entered pleas of Guilty to certain of the subject charges and pleas of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 85604/09

The Respondent, having pleaded guilty, is found Guilty of Specification Nos. 2 and 3. The Respondent is found Guilty of Specification No. 4 and Not Guilty of Specification No. 1.

Disciplinary Case No. 85651/09

The Respondent is found Guilty of Specification No. 1. It is recommended that Specification No. 2 be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on March 11, 2008, the Respondent was assigned to Patrol Borough Manhattan South and that he was on duty in plain clothes assigned to Anticrime Unit duties as the recorder in a Department vehicle operated by Sergeant John Rajan and that at about 9:00 p.m. in the vicinity of 23rd Street and the FDR Drive, they stopped a vehicle being driven by Fernando Tapia.

It is also not disputed that on March 13, 2008, the Respondent was assigned to Patrol Borough Manhattan South's Anticrime Unit, on duty in plain clothes inside an unmarked police vehicle disguised as a taxi cab with Sergeant Rajan, and that at about 1:45 a.m. on West 25th Street, they stopped and questioned a pedestrian, Tanangachi Mfuni.

The Department's Case

The Department called Fernando Tapia, Tanangachi Mfuni and Mario Miranda as witnesses.

Fernando Tapia

Fernando Tapia, a 25-year resident of the Bronx who recently graduated from Baruch College and who has never been convicted of a crime, recalled that on March 11, 2008, at about 9:00 p.m., he was alone in his Ford Explorer driving in the vicinity of 23rd Street and the FDR Drive, Manhattan. He was smoking a "triple Maduro" cigar and his ID was inside his wallet which he had placed in a cup holder, when his vehicle was pulled over by the Respondent and another officer who appeared to Tapia to be of "Indian descent." The Respondent approached the passenger side of the Explorer. The other officer approached the driver's side and asked Tapia to produce his license and registration. When Tapia asked this officer why he had been stopped, the officer told him, "Your plate light is off." This officer asked Tapia, "Do you have any weed on you?" Tapia told this officer, "No. I don't smoke weed. I can't afford to because my father is a judge." Tapia reached over toward the ashtray where he had been depositing the ash from his cigar to get his wallet which was inside the cup holder next to the ashtray.

The officer directed him to get out of the driver's seat. He got out and was seated on the ground with his back against the driver's side of his Explorer. He saw flashes of light from a flashlight which led him to conclude that the Respondent was shining a flashlight into the passenger side windows of the Explorer and looking into the interior of

the car. He then heard doors opening and closing and he could feel his Explorer rocking back and forth which indicated to him that the Respondent had entered the Explorer and was moving around inside the front and rear seating areas of the vehicle. When nothing was found, the officers told him he could get back into his car. The officers then reentered their vehicle and drove off. Tapia filed a complaint with the Civilian Complaint Review Board (CCRB).

Tanangachi Mfuni

Tanangachi Mfuni, who is presently employed by the U.S. Army's Public Affairs Command at Fort Hood, Texas, recalled that in March, 2008, she was employed as a reporter for the New York Daily News.

On March 13, 2008, she was assigned to a nighttime "stakeout" of 55 West 25th Street, Manhattan, which was the residence of Ashley Dupree.¹ Since Mfuni did not have a car, when she arrived at 55 West 25th Street at about midnight, she stood by an empty lot near 41 West 25th Street, a vantage point from where she could observe the front of 55 West 25th Street. She was wearing a black bubble coat and a winter hat. She was carrying a pocketbook. She was also carrying her Daily News press credential.

At about 1:30 a.m., a taxi pulled up near her. The Respondent and Sergeant Rajan got out of the taxi and approached her. She immediately realized that they were police officers because she could see their shields which were hanging from chains around their necks. When Rajan asked her what she was doing there, she told him that she was waiting there for a friend. When she was asked to produce identification, she handed

¹ Dupree's comings and goings from her residence had become of interest to news organizations after it became public knowledge that then-Governor Elliott Spitzer had paid her for sex.

Rajan her driver's license and her ID from Columbia University. He looked at them and then handed them back to her. She asked the officers, "Is there a problem?"

The officers left, but soon returned. When Rajan asked her if she was journalism student, she again told him that she was waiting there for a friend. Rajan asked her, "Who do you work for?" She responded by telling him that she had "every right to be here." When Rajan asked if he could search her handbag, she told him, "No." Rajan then grabbed her handbag. As she held onto her bag, she became off balance and she grabbed a nearby pole for support. The Respondent also grabbed and pulled on her bag. As she resisted their efforts to pull her handbag away from her, she exclaimed, "No, in the name of Jesus!" Rajan loudly told her, "I think you are a psycho!" When she told them that she wanted their names and shield numbers, they did not respond.

They turned and walked back to the cab. As they got into the cab, she "yelled" at them, "I'm willing to go to the precinct." She testified that what she meant was that she was willing to ride with them in their vehicle to their command so that she could get the information she wanted. In order to get into their cab, she walked to the rear driver's side door, grabbed the door handle, pulled it and "opened the door slightly," at which point Rajan "jumped out" of the cab and told her, "You're going to be arrested." She never got into the cab and sat down because she was grabbed, her clothing was patted down and her handbag was taken from her. She was then placed in handcuffs.

After the officers spoke to someone on their radio, the Respondent handed her a summons. When she looked at the summons, she realized that he had entered her sister's name in the box on the summons labeled "defendant." She testified that the Respondent had entered her sister's name on the summons because she kept her sister's "old ID" in

her wallet and the Respondent had used this ID in preparing the summons. When she explained this to the Respondent, he told her that he would void the summons. He issued her a new summons [Department's Exhibit (DX) 1]. She then displayed her press credential to the officers.

On May 14, 2008, when she appeared in Criminal Court to answer the summons, she was told that the summons had been "thrown out." She has not filed a lawsuit regarding this incident. She filed a complaint with CCRB.

On cross-examination, when Mfuni was asked why she had not immediately identified herself to the officers as a reporter, she answered that she was not "directly asked" by the officers whether she "was press." She explained that if they had asked her this question, she would have told them that she "was press" and she would have displayed her Department-issued press credential to them.

She acknowledged that she had lied to the officers twice about why she was there when she told them two times that she was waiting for a friend. She estimated that about 30 minutes elapsed between the point in time when the officers first approached her to the point in time when she told them for the first time that she "was press."

She acknowledged that the officers never invited her to enter their cab. She also acknowledged that she did not tell them that she was going to open the rear door of the cab and get in before she grabbed the rear door handle, pulled on it and opened the door slightly.

Mario Miranda

Mario Miranda, a 20-year member of the service who served as a police officer from 1987 until his retirement in 2007, recalled that in March, 2008, he was employed by Elite Investigations as a security guard.

His assignment on the evening of March 13, 2008, was to sit inside a vehicle which was parked on West 25th Street, Manhattan, directly behind a CNN television van and to watch the van to insure that no one broke into it. He observed a female, whose name he later learned was Mfuni, walking up and down West 25th Street. He saw two male officers in plain clothes approach her. He could tell that one was a sergeant because he could see his shield hanging from a chain around his neck. Because it was cold out, he had his windows up so he could not hear their conversation, although at one point the officers were speaking loudly. There was a struggle over a handbag. After the interaction between Mfuni and the officers ended and the officers had left the area, he approached her and saw that she was crying. She told him that she had been served with a summons. Miranda told Mifuni that she could file a complaint with CCRB if she wanted to and he provided her with the telephone number for CCRB.

On cross-examination, Miranda agreed that all of his observations of Mifuni's encounter with the officers were made looking at his rear view mirror and that he often looked away from his rear view mirror because his job was to focus on the CNN van in front of him. Miranda recalled that at one point he saw Mifuni seated inside the rear seating area of the cab but he never saw her grabbing the handle of the door or trying to open it to get into the cab. She told him that she had not immediately identified herself as press to the officers.

The Respondent's Case

The Respondent testified on his own behalf.

The Respondent

The Respondent testified that he and Rajan decided to stop the vehicle that was being driven by Tapia because they observed that Tapia had changed lanes without signaling. When he looked into Tapia's car, he smelled the strong odor of marijuana and he saw ash inside the driver's ashtray. Rajan spoke to Tapia and told him to get out of the car. Since the smell of marijuana was coming from the ashtray, the Respondent leaned into the front passenger side of the car to inspect the ashtray. Since he saw only ash and since ash alone cannot be tested for the presence of marijuana, he did not vouch for this ash. He was inside the car only "a minute, maybe two," and he conducted no further search of any other area of the interior of the car. After the Respondent told Rajan that he saw only ash, Rajan "put him back in his vehicle and sent him on his way." The entire stop lasted 15 minutes. The Respondent never spoke to Tapia. The Respondent did not make any entry in his activity log regarding this vehicle stop and he did not prepare a UF-250 Stop and Frisk Report. The Respondent testified, "I have no good excuse as to why I didn't. I just didn't."

The Respondent testified that he and Rajan pulled their cab up to where Mfuni was standing because they had observed her walking back and forth alongside a car parked on West 25th Street next to a water meter. When they asked her if she was alright, she told them that she was waiting for a friend and that she had been there for only a few minutes. They drove down the block and asked a doorman how long the woman (Mfuni) had been there. He told them that she had been there all day. He and Rajan decided to

get out of their cab and approach Mfuni. When they approached her, Rajan asked her why she was hanging out there. She backed herself away from them into an area between the parked car and the water meter and she refused their requests that she step out. She was clutching a large handbag. Rajan grabbed the bag, looked into it and saw that she had a press credential. Rajan told her that she had to identify herself as press to police. She asked for Rajan's shield number and he provided it. They then walked back to their car because the encounter was over. When they got back into their car, Mfuni suddenly opened the rear door on the driver's side of the cab and hopped into the rear seat. They got out of their seats, removed her from the rear seat and handcuffed her.

After conducting a warrant check on Mfuni, he issued her a summons charging her with Disorderly Conduct. She told him that the he had entered her sister's name on the summons because he had used her sister's ID in preparing the summons. He told her that he would void the summons and issue her a new summons, which he did. After this encounter with Mifuni, he entered notations about the encounter in his activity log and he prepared a UF-250 Stop and Frisk Report regarding the stop and frisk he and Rajan had conducted.

On cross-examination, the Respondent testified that Rajan directed him to inspect the interior of Tapia's vehicle. When he looked into Tapia's car, he saw ash inside the ashtray and he also saw rolling paper. The Respondent was confronted with statements he made at his CCRB interview. At this interview, when the Respondent was asked why he and Rajan had stopped Tapia's car, he told his interviewers that he could not remember why they had pulled Tapia's car over. When he was asked whether Rajan had

directed him to search Tapia's car, he responded that he had conducted the search on his own.

FINDINGS & ANALYSIS

Disciplinary Case No. 85604/09

Specification No. 1

It is charged that the Respondent, while on duty on March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, New York County, did fail to do his duty in that he failed to ensure that a quantity of what was believed to be marijuana was safeguarded and properly vouchered. The Department offered no evidence on the Department's case in chief that the substance the Respondent found inside Tapia's car could have been, much less was, marijuana residue. On the contrary, the Assistant Department Advocate (the Advocate) asserted that Tapia testified truthfully when he asserted that it was cigar ash, that he has never smoked marijuana, and that no one else had ever smoked marijuana inside the car, and that the Respondent had no reason to believe that Tapia had been smoking marijuana inside his car. Thus, the Department took the position there was no marijuana residue inside the car for the Respondent to safeguard and voucher.

The Advocate's position that the Respondent is guilty of the charged misconduct is based on statements the Respondent made at his CCRB interview which were placed in the record based on the responses the Respondent provided to the Advocate's questions on cross-examination. Thus, Department's entire case consisted solely of the Respondent's statement that he observed what he believed might be marijuana ash inside

Tapia's vehicle. The Advocate asserted that based on this belief, the Respondent was required to recover and voucher this ash. However, the Respondent asserted that material that consists only of ash cannot be tested to verify whether it contains marijuana and the Advocate offered no testimony or other evidence to refute the Respondent's contention. As a result, the record contains no testimony or evidence other than the Respondent's unrefuted testimony.

The facts here are similar to those presented in Disciplinary Case No. 83672/08 (approved by the Police Commissioner on September 30, 2009). In that case, the Respondent police officer was found not guilty of the charge that he had failed to voucher a quantity of what appeared to be marijuana that he recovered inside a car. At that trial, as here, the driver testified that he had never used marijuana and that no one he drove in the car had ever smoked marijuana inside the car; the Department's only evidence consisted of statements the Respondent made at his CCRB interview; and the Department offered no evidence to refute the Respondent's contention that, under the circumstances presented, he was not required to voucher the suspected marijuana he had recovered.

Based on the above, the Respondent is found Not Guilty of Specification No. 1.

Specification Nos. 2 and 3

It is charged that the Respondent, while on duty on March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, New York County, failed to maintain his activity log in that after his encounter with Tapia he did not make any notations about the encounter in his activity log, and that he also failed to prepare a UF-250 Stop and Frisk Report.

The Respondent, having pleaded guilty, is found Guilty of Specification Nos. 2 and 3.

Specification No. 4

It is charged that the Respondent, while on duty on March 11, 2008, in the vicinity of 23rd Street and the FDR Drive, New York County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he abused his authority by searching a vehicle occupied by Tapia without sufficient legal authority. I find the Respondent guilty based on Tapia's credible testimony, the statements the Respondent made at his CCRB interview, and the Respondent's admitted failure to document this vehicular stop and search.

The Respondent's admitted failure to make any entries in his activity log regarding this vehicle stop and his failure to prepare a UF-250 Stop and Frisk Report, resulted in a completely undocumented vehicle stop. As a result of these failures, Department records would reflect that this vehicle stop never happened. The Respondent's testimony that he could offer no excuse or explanation for why he failed to properly document this vehicle stop, as he knew he was required to do, raises the suspicion that he failed to document this vehicle stop because he knew that his actions during this stop were improper.

Tapia's candid testimony that because he was sitting outside his vehicle with his back up against his car he did not actually see the Respondent searching the interior of his car, lends credibility to his testimony. If Tapia was inventing a false version of events it is likely that he would have claimed that he was able to see the Respondent searching the

interior of his car. As a result, I credit Tapia's testimony that he knew the interior of his car was being searched because he could feel the car moving as the Respondent moved around inside the front and rear seating areas, and I credit Tapia's claims that he did not fail to signal any turn or lane change before his car was stopped, that he was smoking a cigar not marijuana, and that there was no rolling paper inside his car.

At his CCRB interview, the Respondent told his interviewers that he could not remember why he and Rajan had pulled Tapia's car over; that he had leaned into Tapia's car on his own initiative; and that he had only observed some ash next to the driver's seat. Based on these previous statements, which were made at a point in time that was closer to the date that this stop took place, I reject the Respondent's trial testimony that he now recalls that he and Rajan pulled Tapia's car over because Tapia had failed to signal for a lane change; that he only searched the interior of Tapia's car because he was ordered by Rajan to do this; and that he saw rolling paper, as well as ash, inside Tapia's vehicle.

Since I find that the Respondent conducted a search of the interior of Tapia's car and since the Respondent had an insufficient legal basis on which to conduct a search of the interior of Tapia's car, he is found Guilty of Specification No. 4.

Disciplinary Case No. 85651/09

Specification No. 1

It is charged that the Respondent, on August 19, 2008, failed to fully cooperate with a CCRB investigation in that he did not provide his activity log to CCRB Investigator Rivera. The Respondent admitted that when he appeared at CCRB to be interviewed he did not bring his activity log with him, as he was required to do. I reject

the Respondent's claim that, prior to his interview, he had faxed the relevant pages of his activity log to Investigator Rivera at a telephone number that was provided to him because the Respondent produced no evidence to corroborate, or even support, this claim.

The Respondent is found Guilty of Specification No. 1.

Specification No. 2

It is charged that the Respondent, on March 13, 2008, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department and that he abused his authority by wrongfully issuing a summons to Mfuni charging her with Disorderly Conduct (DX 1).

I recommend that this Specification be Dismissed based on the testimony of Mfuni. Mfuni admitted that when Rajan and the Respondent walked away from her and re-entered their car, while she was standing on a public street in front of a residential building on West 25th Street after midnight, she "yelled," at them, "I'm willing to go to the precinct." Mfuni also admitted that after Rajan and the Respondent had seated themselves in the front seats of their vehicle, she walked up behind them and opened the rear door of their car with the intent of entering into the rear seating area without having told them that she was going to get into their car. Since Mfuni testified that at that point in time the officers had not patted down her clothing and that she had refused Rajan's request to be allowed to search her handbag, they could not be certain that Mfuni was not carrying a weapon. Since Mfuni testified that Rajan had just called her "a psycho," her action of opening the rear door of their car without first telling them that she was going to get into their car was extremely provocative because if she had entered their car and sat

down behind them, she posed a potential danger to them. Thus, it is not surprising that, as Mfuni described it, Rajan “jumped” out of the front seat and confronted her.

The Advocate argued that the Respondent issued this summons wrongfully because Mfuni’s actions did not constitute Disorderly Conduct since Mfuni did not intentionally cause, or recklessly create a risk of, public inconvenience, annoyance or alarm. However, Mfuni testified that it was Rajan, not the Respondent, who told her that she was going to be arrested. Thus, the Respondent issued this summons at the direction of his supervisor and the Respondent could have been subjected to disciplinary action had he refused to issue this summons to Mfuni.

Based on the above, it is recommended that Specification No. 2 be Dismissed.

PENALTY

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

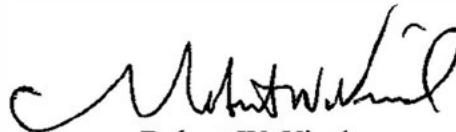
The Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded guilty and admitted that he failed to make any notations about his encounter with Tapia in his activity log and that he also failed to prepare a UF-250 Stop and Frisk Report. The Respondent testified that he could offer no excuse for why he failed to document this vehicle stop as he was required to do. The Respondent has been found Guilty of having searched Tapia’s vehicle without sufficient

legal authority. Finally, the Respondent has been found Guilty of failing to provide his activity log to CCRB.

It is recommended that the Respondent forfeit ten vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED
OCT 13 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT ADMIRAND
TAX REGISTRY NO. 929595
DISCIPLINARY CASE NOS. 85604/09 & 85651/09

The Respondent received an overall rating of 4.5 on his 2009 performance evaluation, 4.5 on his 2008 evaluation, and 4.5 on his 2007 evaluation. He has been awarded one Meritorious Police Duty medal. [REDACTED]
[REDACTED]. He has no prior disciplinary record.

On July 10, 2008, he was placed in Level I Force Monitoring for having received three or more CCRB complaints in one year. This Force Monitoring is still active.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials