



POLICE DEPARTMENT CITY OF NEW YORK

July 27, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Adam Dumelle
Tax Registry No. 948001
79 Precinct
Disciplinary Case No. 2015-14416

Police Officer Pamela Benites
Tax Registry No. 946728
Queens Special Victims
Disciplinary Case No. 2015-14419

Charges and Specifications:

Disciplinary Case No. 2015-14416

1. Said Police Officer Adam Dumelle, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct, and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Person A without sufficient authority.
P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK
2. Said Police Officer Adam Dumelle, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Person B without sufficient authority.
P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK
3. Said Police Officer Adam Dumelle, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Person A without sufficient legal authority.
P.G. 203-10(5), Page 1, Paragraph 2 – STOP AND FRISK
4. Said Police Officer Adam Dumelle, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused his

authority as a member of the New York City Police Department, in that he searched Person A without sufficient legal authority.

P.G. 203-11, Page 1, Paragraph 3 – STOP AND FRISK

5. Said Police Officer Adam Dumelle, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, wrongfully used force in that he punched Person A without police necessity.

P.G. 203-11- USE OF FORCE

Disciplinary Case No. 2015-14419

1. Said Police Officer Pamela Benites, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that she stopped Person A without sufficient legal authority.

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

2. Said Police Officer Pamela Benites, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused her authority as a member of the New York City Police Department, in that she stopped Person B without sufficient legal authority. (*As amended*)

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

3. Said Police Officer Pamela Benites, on or about September 15, 2014, at approximately 1800 hours, while assigned to the 79th Precinct and on duty, in the vicinity of Van Buren Street and Throop Avenue, Kings County, abused her authority as a member of the New York City Police Department, in that she frisked Person B without sufficient legal authority. (*As amended*)

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

Appearances:

For CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondents: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, New York 10038

Hearing Date:

May 18, 2016

Decision:

Respondent Dumelle is Not Guilty.
Respondent Benites is Not Guilty.

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on May 18, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges and testified on their 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 Dumelle and Benites Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on September 15, 2014, at approximately 1800 hours, Respondents, who were assigned to the 79 Precinct, were in plain clothes in an unmarked RMP in the vicinity of Throop Avenue and Van Buren Street in Brooklyn. Person A was standing outside a store on the corner of this intersection. Person B rode up to Person A on a bicycle. Person A got on the bicycle and as he began to ride away, Respondent Dumelle stopped him. Respondent Benites stopped Person B. A struggle ensued between Respondent Dumelle and Person A. Person A and Person B were taken to the 79 Precinct. Person A was charged with criminal sale of a controlled substance, obstructing governmental administration, and resisting arrest. No drugs were

found on either Person A or Person B. The areas in dispute concern what Person A and Person B were doing prior to being stopped and what occurred after the stops.

Neither Person A nor Person B testified at trial. CCRB represented that it made several unsuccessful attempts to contact Person A and that Person B was served with a subpoena to appear for trial. Transcripts and audios of their interviews with CCRB were admitted into evidence. A video of portions of the events in question was also admitted into evidence.

Respondent Dumelle testified that he and Respondent Benites were at the corner of Throop and Van Buren that day as part of a Strategic Enforcement Team assigned to observe the area which was known as a drug-prone location. (Tr. 14) Respondent Benites testified that the block was also a known gang location. (Tr. 41) While they were observing the location for approximately a half hour, Respondent Dumelle saw one individual, who was later identified as Person A, standing outside the corner bodega while three to four other people approached him, did a quick exchange, and then walked off. (Tr. 15-16, 22) Respondent Dumelle described the actions he saw as individuals walking up to Person A, handing him something and receiving something that Person A had taken out of his pocket. (Tr. 16) He wrote in his memo book and on the arrest report that he saw drugs exchanged for U.S. currency, but he did not actually see that. He assumed it was drugs being exchanged for currency based on his training and experience. (Tr. 26-28) Respondent Benites testified that she saw three or four people approach Person A and in very brief interactions do a "quick shake" in what appeared to be a drug transaction. (Tr. 41-42) On cross-examination she testified that she saw money and something that could be drugs exchanged. She acknowledged that she previously told a

CCRB investigator that she saw money exchanged for drugs between Person A and Person B. The packaging she saw "looked very familiar to the one usually with marijuana." (Tr. 51-54) Respondent Dumelle testified that he and Respondent Benites had a conversation in the car before they stopped Person A and Person B about the narcotics sales they were observing. (Tr. 17)

When Respondent Dumelle saw Person A exchange something with Person B and get on the bicycle Person B handed to him, he decided to apprehend Person A before he rode away. (Tr. 16-17, 23) Respondent Dumelle got out of the car with his badge visible, and told Person A, "Police. Don't move." (Tr. 18) Respondent Dumelle had already made the decision to arrest Person A for drug transactions. (Tr. 31) Person A did stop and got off the bicycle. Respondent Dumelle testified that he gave Person A a "field frisk for weapons" and then attempted to place handcuffs on him. (Tr. 18) He further testified that as he tried to put the handcuffs on, Person A, "kept ripping his hands out of my grip telling me to, you know, 'Don't fucking touch me. Let go of me. You can't stop me.' As he was doing that, we started to struggle. I took him to the ground. And we rolled around on the ground. I kept trying to bring his arms behind his back. He refused. I gave him some softening strikes to his meaty rib area to try to get his arm behind his back." (Tr. 19) Respondent Dumelle stated that he struck Person A two times in the right rib cage area and never struck any other part of his body. After he hit him, Person A still refused to comply and Respondent Benites called for assistance. (Tr. 19) Two other police officers who arrived also tried unsuccessfully to put Person A's arms behind his back and then a Sergeant who arrived at the scene deployed a Taser. The Taser did not have an effect at first but eventually Person A put

his hands behind his back and Respondent Dumelle was able to handcuff him with assistance. (Tr. 20)

When Respondent Dumelle initially approached Person A, Respondent Benites approached Person B, identified herself and told him not to move. (Tr. 44) She had already made the determination to arrest him for purchasing drugs at this point. (Tr. 54-55) Person B complied and she placed handcuffs on him. (Tr. 43-44) She frisked Person B for weapons. (Tr. 55) When she saw Person A resisting, she called for assistance. (Tr. 45) She described Person A as yelling, screaming, cursing, and throwing his body towards the floor. (Tr. 45)

Respondent Dumelle testified that he did not do any further search of Person A at the scene but did do a further search at the Precinct. No search was done of the area around where the two men were arrested. (Tr. 46) No contraband was found on Person A during the search at the Precinct. (Tr. 20-21) Respondent Dumelle does not remember if he did a strip search. (Tr. 32-33) One ten dollar bill was found on Person A. (Tr. 29) No contraband was found on Person B. Respondent Dumelle doesn't recall if he strip searched him. Person B's arrest was voided because he had no drugs on him. (Tr. 33)

In Person A's statement to CCRB he told the CCRB investigator that he was standing in front of the store for about five minutes waiting to eat when his friend came up to him on a bike. When Person A got on the bike the police asked him to stop and they searched him. (CCRB Ex. 1A, 3, 5) He further stated that the officer, "was trying to put my hands behind my back. So he didn't do it. So he punched me in the face. When he hit me in the face I asked him why he punched me. Then he called for – he called for back-up. And they all threw me on the floor and tased me and stuff." He stated that he

was taken to the 79 Precinct and was strip-searched. (CCRB Ex. 1A, 4) In response to further questions from the CCRB investigator, Person A said that before the police arrived he hadn't spoken to anybody or interacted with anybody and was just sitting outside the store. He stated that he did not physically interact with Person B before he got on the bike. (CCRB Ex. 1A, 6) When asked for additional details, Person A stated that he asked the officer what he was arresting him for and then the officer punched him on the right side of his face with a closed hand and then threw him to the ground. (CCRB Ex. 1A, 9-10) While he was on the ground "a bunch" of police officers tried to handcuff him and then he was tased. (CCRB Ex. 1A, 10-11) After about five minutes on the ground, he was handcuffed. (CCRB Ex. 1A, 12-13) He stated he was strip searched by the officer who arrested him and described that officer as having black curly hair. (CCRB Ex. 1A, 4-5, 13)

In Person B's statement to CCRB, he described parking the bike he was riding so that he could go in the store at Throop and Van Buren. He said Person A was waiting on the corner at the same time with his bike. Person A was with two other men in front of the store. Person B parked the bike he was riding about 10 to 15 feet away from Person A before Person A went to the bike and picked it up. Person B later stated that Person A has two bikes and the one he picked up was also his. Person B stated that the police then rode up to Person B and asked him what Person A had handed him. (CCRB Ex. 2A, 3, 8, 11) Person B told the CCRB investigator that the female officer put her hands into his pockets. He got into a "heated argument" with her and she handcuffed him. He later said she "frisked" him before she handcuffed him and that the officers frisked Person A. (CCRB Ex. 2A, 4).

In his statement, Person B described the officers telling Person A to put his hands behind his back and then one officer punching Person A in the face twice with a closed fist in the jaw area, grabbing him around the neck and throwing him to the ground after Person A asked what he was being arrested for. Person B initially stated that Person A “tensed up” and asked why he was being arrested when the officer told him to put his hands behind his back. CCRB Ex. 2A, 18-20) Upon additional questioning, Person B said he didn’t know if Person A tensed up and described the officer as swinging “immediately” at Person A. (CCRB Ex. 2A, 18-19) Person B stated that at some point another unit arrived and they tasered Person A. He further stated that he and Person A were taken to the 79 Precinct and were strip searched by the officers who arrived as the second unit on the scene. (CCRB Ex. 2A, 5, 34) Person B thinks these same two officers strip searched Person A although he and Person A were in separate cells. (CCRB Ex. 2A, 35-36) No contraband was found on Person B and he was let go.

There is also video evidence in this case. The view from the camera faces from the area of the store out towards Van Buren Street. The video does show Person A standing in the vicinity of Van Buren and Throop and does show him close to several people, including Person B, during the course of the video. (CCRB, Ex. 3 at approximately 18:9:41, 18:14:4, 18:18:29, and 18:22:1)

The video unfortunately has what the counsel for the CCRB referred to as “glitches”, which are actually portions where the video freezes and then skips, what in some sections, seems to be as long as 29 or 36 seconds according to the time stamp at the top of the view. (See for example CCRB Ex. 3 at 18:11 :56 which skips to 18:12:25 and 18:13:12 which skips to 18:13:48). While the video therefore can be used to verify some

aspects of events, it certainly does not replicate exactly what happened at the scene during the incident. Also, gaps of such periods of time provide ample time for exchanges and encounters to have occurred as testified to by Respondents and yet still not appear on the video.

Respondent Benites is charged with stopping Person A and Person B without legal authority and frisking Person B without legal authority. By all accounts, even the hearsay statements of Person A and Person B, Respondent Benites stopped Person B and Respondent Dumelle stopped Person A. Respondent Benites therefore is Not Guilty of stopping Person A.

Since there is no dispute that Respondent Benites stopped Person B, the only question is whether she had sufficient legal authority to do so. While Person B was ultimately not found in possession of any contraband and was released, it must be determined if the stop was lawful at the time it was made. Under Patrol Guide 212-11 (1), "When a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor," that officer may "stop [the] person and request identification and explanation of conduct." Whether a stop was permissible is fact specific and requires a case by case determination. Respondent Benites articulated a reasonable basis for this particular stop.

Various factors can lead to a reasonable suspicion that a drug transaction has occurred. These include whether the location has a high incidence of drug sales, the officer's experience and training, and the behavior of the suspects. *People v. Jones*, 90 N.Y.2d 835, 837 (1997) These factors weigh in favor of a finding that Respondent Benites had reasonable suspicion to make this stop. Respondent Benites is an experienced officer who has made over 200 arrests. On the date in question she had prior

knowledge that the specific block she was assigned to observe was both a drug prone and gang location. During the course of her observations she specifically noted behavior that was consistent, based on her training and experience, with drug transactions being made. She saw very "quick shakes" between individuals three or four times. She also testified that she saw money and drugs being exchanged between the individuals including Person B. While ultimately her statement that she saw drugs was actually her assumption that marijuana was being exchanged based on the packaging she saw, she still clearly articulated factors which constitute at a minimum reasonable suspicion that a crime had taken place. Respondent Benites therefore is Not Guilty of stopping Person B without sufficient legal authority.

The last charge against Respondent Benites is that she frisked Person B without sufficient legal authority. Respondent Benites admits that she frisked Person B. This frisk came after she had made the determination to arrest Person B for purchasing drugs based on her observations. She conducted the field frisk for a weapon before placing Person B in the police car. Counsel for CCRB argued that frisks and searches considered incident to arrest are permissible only insofar as an arrest itself is lawful. However, notably, in this case there is no charge against Respondent Benites for an unlawful arrest. Having found the stop to be lawful and based on the fact that Person B was placed under arrest at the scene, I find that the field frisk done for a weapon by Respondent Benites before placing Person B in the police car was a search incident to arrest and therefore CCRB has not met its burden of proof that the frisk was done without sufficient legal authority. Respondent Benites is Not Guilty of Specification 3.

Respondent Dumelle, in Specification 2, was charged with stopping Person B without sufficient legal authority. As discussed above, Respondent Benites was the officer who stopped Person B and I therefore find Respondent Dumelle Not Guilty of this charge.

Respondent Dumelle is also charged with stopping Person A without sufficient legal authority. I find that the CCRB has not met its burden of proof with regard to this charge. Respondent Dumelle testified in a credible manner that based on his training and experience, the nature of the very quick encounters combined with his knowledge of the location as a drug prone area, and the fact that he had conversations in the police car with Respondent Benites who testified she did see exchanges of money and packaging that looked like marijuana, gave Respondent Dumelle sufficient legal authority to stop Person A.

The video, while as discussed above is of limited value in this case, does corroborate Respondent Dumelle's testimony that at least one very quick encounter between Person A and another man took place at approximately 18:14:4 on the video and a second one took place in what can be seen as the quick transfer of a bicycle at approximately 18:22:4. The bicycle transfer notably does not take place as described by Person B where he states that he placed the bicycle 10-15 feet from Person A, but instead shows what could be actual contact or an exchange between hands between Person B and Person A as Person B's back is to the camera and the bicycle is exchanged at approximately 18:22:4. (CCRB Ex. 3)

With regard to the charges of frisking and searching Person A without sufficient legal authority (Specifications 3 and 4), Respondent Dumelle admitted that he frisked and searched Person A. As with Respondent Benites, Respondent Dumelle had determined,

based on his observations, that Person A was to be arrested for narcotics transactions before he stopped him. The frisk was therefore incidental to the arrest and was made prior to placing Person A in a police car. As with Respondent Benitez, Respondent Dumelle has not been charged with an unlawful arrest. His actions therefore are appropriate as a frisk and search incident to the arrest. Respondent Dumelle is Not Guilty of Specifications 3 and 4.

Specification 5 charges Respondent Dumelle with a wrongful use of force by punching Person A without police necessity. Unlike the stopping, frisking and searching charges where the admissions by Respondent Dumelle made an examination of the civilian's testimony unnecessary, here there is a dispute as to what happened. The two civilians made statements to CCRB investigators that Respondent Dumelle punched Person A in the face. As with all hearsay testimony, there must be very careful scrutiny of it since the trier of facts does not have the benefit of observing the demeanor of the witness nor is their account of events subject to cross-examination. In this case I find Respondent Dumelle's account that he had to hit Person A in the side during his attempt to handcuff him because he was resisting arrest to be credible. Both Respondent Dumelle's demeanor on the stand and his manner of testimony on both direct and cross-examination support my determination that he testified in a credible manner. Respondent Dumelle's description of Person A's resistance is also supported by the fact that Person A ultimately had to be tased in order to be handcuffed.

Person B, on the other hand clearly did not present a credible account of what transpired with the transfer of the bicycle which suggests that other aspects of his testimony may not be credible as well. Person A's credibility is called into question by his statement that he did not talk or interact with anyone outside the store. That is

clearly contradicted by portions of the video. In addition his statement concerning the punch is undermined by the lack of any documentary corroboration such as a photo or medical records. Therefore, I find that CCRB has not met its burden of proof and Respondent Dumelle is Not Guilty of Specification 5.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

OCT 14 2016

JAMES P. O'NEILL
POLICE COMMISSIONER